TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1910.

No. [redacted] 131.

LOUIS A. DOWDELL, Jr., AND WILSON W. HAHN, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

FILED JANUARY 11, 1911.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 332.

LOUIS A. DOWDELL, JR., AND WILSON W. HARN, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

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No. 4191.

Transcript of Record.

In the Supreme Court of the United States.

LOUIS A. DOWDELL, JR., and WILSON W. HARN, Plaintiffs in Error,
versus
THE UNITED STATES OF AMERICA, Defendant in Error.

In the Supreme Court of the Philippine Islands.

1 Supreme Court of the United States.

October Term, 1908.

LOUIS A. DOWDELL, JR., and WILSON W. HARN, Plaintiffs in Error,
vs.
THE UNITED STATES OF AMERICA, Defendant in Error.

In Error to the Supreme Court of the Philippine Islands.

Proceedings Had in the Court of First Instance for the Province of Samar, Philippine Islands, and the Supreme Court of the Philippine Islands.

THE UNITED STATES
versus
LOUIS A. DOWDELL, JR., and WILSON W. HARN.

Be it remembered That heretofore, to-wit, on the thirty-first of January, A. D. 1907, in the Court of First Instance for the Province of Samar, P. I., came Emilio Araneta, Provincial Fiscal for the said province, and filed in said court an information signed by him against Louis A. Dowdell and Wilson H. Harn, which said information is in the words and figures following, to-wit:

2 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the Province of Samar, 12th Judicial District.

Criminal Cause No. 597.

THE UNITED STATES
v.
LOUIS A. DOWDELL and WILSON W. HARN.

Misappropriation of Public Funds.

CATBALOGAN, *January* 31, 1907.

Louis A. Dowdell and Wilson W. Harn are accused by the undersigned of the crime of misappropriation of public funds, committed as follows:

That on or about the eleventh day of January, 1907, the defendant Louis A. Dowdell was an Inspector of the Philippine Constabulary, stationed in this Province of Samar as Supply Officer of the Bureau of Constabulary, and that as such Supply Officer he was in charge, by virtue of his office, of public funds and property to the value of fourteen thousand pesos, more or less, in cash and Philippine bank notes:

That on or about the above mentioned date of January eleventh, 1907, and prior thereto, the aforesaid defendants Louis A. Dowdell and Wilson W. Harn, wilfully, unlawfully and feloniously, conspired together, with other unknown persons, in this town of Catbalogan, Province of Samar, Philippine Islands, for the purpose of stealing and converting to their own use all of the public funds then existing in the office of the Commanding Officer of the Constabulary in this province and in the custody and under the control of the defendant Louis A. Dowdell as Supply Officer; and that in
3 pursuance of such conspiracy and purpose, and while the said defendant Wilson W. Harn was acting as such Supply Officer, the defendants, on the aforesaid day of the eleventh of January, 1907, in the town of Catbalogan, at nightfall, abstracted and appropriated to themselves, wilfully, feloniously and illegally, all the public funds then in the safe in the office of the Commanding Officer of the Constabulary and under the custody and charge of the defendant Louis A. Dowdell, said funds consisting of about fourteen thousand pesos, equivalent to seventy thousand pesetas, in violation of Paragraph 3, of Section three hundred and ninety, of the Penal Code.

(Signed) EMILIO ARANETA,
Provincial Fiscal.

Witnesses:

Chas. H. McIlvaine,	Catbalogan,	Samar.
Ignacio Dilao, P. C.,	"	"
Gregorio Funceras, P. C.,	"	"
Maximo Bani, P. C.,	"	"
Pedro Surigao, P. C.,	"	"
Feliciano Tegio, P. C.,	"	"
Juan Belgar, P. C.,	"	"
Bonifacio Clar, P. C.,	"	"
Valentin Labid.	"	"

Thereafter, and on the same thirty-first day of January, 1907, the defendant Louis A. Dowdell gave bond in the sum of twelve thousand pesos, Philippine currency, which was duly approved by the trial court.

Thereafter, and on the same thirty-first day of January, 1907, the Honorable Charles H. Smith, Judge of the said Court of First Instance for the Province of Samar, made the following order:

4 (Title of Court and Cause.)

The complaint in this cause was read to the accused in open court and thereupon the accused were advised of their rights granted them

by Section 17 of General Order 58, which section was read in total to the accused in open court. The accused personally advised the court that they were not prepared to plead in the case; that they had not consulted their attorney, Mr. Wolfson of Manila; that they had both been in detention until this date and are now in detention. They therefore made oral application to the court for continuance of the case in its present status (without plea) until the first day of the next regular term of this court, to-wit, the fifth day of March, 1907, at which time each of the accused advised the court they would be prepared for trial immediately upon completion of the arraignment. There being no objection to this application on the part of Mr. Emelio Araneta, Provincial Fiscal, it is ordered that the cause stand adjourned in its present condition to the fifth day of March, 1907, that being the first day of the regular term of the Court of First Instance of the Province of Samar to be held in the pueblo of Catbalogan in said province.

It is further ordered that the defendant, Louis A. Dowdell, be released from custody upon filing of his personal appearance bond in this court, the court having been advised of the approval of a regular bond in his behalf in the sum of twelve thousand (12,000) pesos by the Hon. A. S. Crossfield, Judge of the Court of First Instance of the City of Manila.

And it is further ordered that upon filing of a similar bond
5 in behalf of the other defendant, Wilson W. Harn, approved by a regular Judge of the Court of First Instance of the City of Manila and the presentation of a personal bond by the said last mentioned defendant in this case, the clerk of this court approve the same, and that thereupon, forthwith, the said defendant Wilson W. Harn be released from custody.

Catbalogan, Samar, P. I., January 31, 1907.

(Signed) CHAS. H. SMITH, *Judge.*

We have read and approve the foregoing order of the Court.

(Signed) LOUIS A. DOWDELL.

(Signed) WILSON W. HARN.

Thereafter, and on the second day of February, 1907, the Provincial Fiscal for the Province of Samar, at the request of the Agent and Inspector of the American Surety Company and the Fidelity & Deposit Company of Maryland, presented a petition to the Court of First Instance for a writ of attachment of certain checks and cash, amounting to six hundred and fourteen dollars and sixty-five cents,
Philippine currency, belonging to the defendant Louis A.
6 Dowdell and at the time in the hands of the Senior Inspector of Constabulary for the Province of Samar.

On the same day the attachment was duly issued, and the return of the Sheriff of the Province of Samar thereon shows that the said funds were duly attached the same day.

On the fourteenth day of February, 1907, counsel for defendants moved for a continuance of the case to the term of court next succeeding the March term, which said continuance was granted by the Court on the sixth day of March, 1907.

Thereafter, to-wit, on the thirtieth of March, 1907, the following amended complaint was filed in the trial court:

(Title of Court and Cause.)

Amended Complaint.

Louis A. Dowdell, Jr., Wilson W. Harn and Charles H. MacIlvaine are accused by the undersigned of the crime of misappropriation of public funds, committed as follows:

That on the eleventh day of January, 1907, and for several months prior thereto, the said Louis A. Dowdell, Jr., Wilson W. Harn, and Charles H. MacIlvaine were duly appointed qualified and
7 acting public officials as inspectors and lieutenants of the Philippine Constabulary in the Province of Samar, Philippine Islands; that on said eleventh day of January the said Louis A. Dowdell, Jr., and Wilson W. Harn were stationed at the municipality of Catbalogan, in said province; and the said Charles H. McIlvaine, being temporarily absent from his station, was also in the said municipality; that on said date the said Louis A. Dowdell, Jr., was, and for several months prior thereto had been, the duly appointed, qualified and acting Supply Officer for the Philippine Constabulary for the Province of Samar, and, by reason of his duties as said Supply Officer, had in his possession, and under his charge, public funds and property belonging to the Government of the Philippine Islands; and that on said date the said Wilson W. Harn had been duly appointed and was Acting as Officer of the Day, and as said Officer it was his duty to guard and protect all public property in said municipality of Catbalogan belonging to said Philippine Constabulary, including said public funds.

That the said Louis A. Dowdell, Jr., Wilson W. Harn and Charles H. MacIlvaine did then and there, wilfully, unlawfully and feloniously, conspire together to abstract, take, steal and convert to their own use, said public funds, so in the custody and control of the said Louis A. Dowdell, Jr., as said Supply Officer and guarded by said Wilson W. Harn as said Officer of the Day.

That pursuant to the said conspiracy the said Louis A. Dowdell, Jr., and Wilson W. Harn and Charles H. MacIlvaine, with the intent and purpose of stealing and converting to their own use the said funds, did then and there, wilfully, unlawfully and felo-
8 niously abstract and take said public funds and permit the same to be taken, and did then and there secretly remove the same and cause the same to be removed from the office of said Philippine Constabulary to the residence of the said Wilson W. Harn, in the said municipality of Catbalogan, in said province, and did there conceal the same, and during the night of the said eleventh of January, 1907, in further pursuance of the said conspiracy and for the purpose of concealing the evidence of their said crime and of deceiving their superior officers concerning the disappearance of the said public funds, did take and remove the safe, in which said funds had been kept in the office of said Philippine Constabulary by the said

Louis A. Dowdell, Jr., as such Supply Officer, from its customary place, and did then and there take such safe and cause the same to be taken and conveyed out into the bay adjacent to the said municipality of Catbalogan, and did then and there sink the said safe in the waters of the said bay.

That the public funds so abstracted and taken consisted of Philippine coin and paper currency of the value of nine thousand, nine hundred and seventy-one pesos and twenty-six centavos (P9971.26) the equivalent in value of forty-nine thousand, eight hundred and fifty-six pesetas.

That all said acts were in violation of law and in particular of paragraph three (3) of article three hundred and ninety (390) of the Penal Code.

Catbalogan, Samar, P. I., March 30, 1907.

EMILIO ARANETA,
Provincial Fiscal.

9 Witnesses:

Major J. B. Murphy, P. C.,	Catbalogan,	Samar.
Mr. Lloyd W. Berry,	"	"
Ignacio Dilao, P. C.,	"	"
Gregorio Funceras, P. C.,	"	"
Maximo Bani, P. C.,	"	"
Pedro Surigao, P. C.,	"	"
Feliciano Tegio, P. C.,	"	"
Juan Belgar, P. C.,	"	"
Bonifacio Clar, P. C.,	"	"
Valentin Labid,	"	"
Sixto Vista,	"	"
Emigdio Paganos,	"	"
Julian Casimiro,	"	"

Thereafter, to-wit, on the first of April, 1907, the Honorable W. F. Norris, Judge of the Court of First Instance of Samar, made the following order:

(Title of Court and Cause.)

Order.

An amended complaint having this day been filed herein, making Charles H. MacIlvaine one of the accused and the said MacIlvaine having appeared in open court and requested that the amount of his bond be fixed, the court thereupon fixes the same at the sum of twelve thousand (P12,000.00) pesos; and pending the execution of the said bond, with satisfactory sureties, orders the said accused in the custody of the Sheriff.

It farther appearing from telegrams presented to the Court by the attorneys for the accused Dowdell and Harn, that said Dowdell is ill in the hospital in Manila, the hearing of this case is hereby continued until, and specially set for, the second day of May, 1907.

(Signed) W. F. NORRIS, *Judge.*

Catbalogan, Samar, April 1, 1907.

10 Thereafter, and at the request of counsel for the defendants, subpœnas were duly issued to the following witnesses:

Mr. Hogg, a resident of Catarman.
Mr. Mackay, a resident of Calbayog, Samar.
Valentin Labid, a resident of Catbalogan, Samar.
George F. Cook, a resident of Calbayog, Samar.
Lieut. R. A. Byers, a resident of San José, Samar.
Sergt. Robinson, U. S. Signal Corps, Catbalogan.
Bruno Andrade, a resident of Catbalogan.
C. L. Hoover, Superintendent of Schools, Catbalogan.

Thereafter, to wit, counsel for defendants filed the following demurrer to the information:

(Title of Court and Cause.)

Demurrer.

Now come the defendants, Louis A. Dowdell and Wilson W. Harn, in the above styled cause, by their attorneys J. N. Wolfson and L. M. Southworth, and demur to the informations exhibited against them and assign the following reasons:

1st. Because the facts charged do not constitute a public offense, under the laws of the Philippine Islands, in that the information fails to allege that the defendants, Louis A. Dowdell, Wilson W Harn and Charles H. MacIlvaine, were public officials of the Government of the Philippine Islands, who by reason of their duties had in their charge public funds of the Government of the Philippine Islands; and because said information fails to allege that the funds charged to have been taken, were appropriated by or converted to the use of the defendants or that the Government of the Philippine Islands has been damaged or prejudiced by said taking.

2nd. Because the information charges more than one offense against the defendants.

11 3rd. Because the information charges the defendant Harn with neglect of duty as a Constabulary Officer, which offense is punishable under Act No. 619 of the Commission of the Philippine Islands, and said alleged offense is punishable exclusively by said Act of the Commission.

Respectfully submitted.

J. N. WOLFSON,
L. M. SOUTHWORTH,
Attorneys for Defendants, Dowdell and Harn.

Thereafter, and on the fourth of May, 1907, the Judge of the Court of First Instance of Samar made the following order:

(Title of Court and Cause.)

Order.

Counsel for defendants interpose a general demurrer to the complaint which was submitted to the court on argument and overruled, to which ruling of the court the defendants except.

(Signed) W. F. NORRIS, *Judge.*

Catbalogan, Samar, P. I., May 4, 1907.

12 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the Province of Samar, 12th Judicial District.

Criminal Case. No. 597.

LOS ESTADOS UNIDOS
contra
LOUIS A. DOWDELL, JR., WILSON W. HARN, Y CHARLES H. MACILVAINE.

(*Separate Trial of Wilson W. Harn.*)

Tried before Honorable W. F. Norris, Judge of the Court of First Instance for the Twelfth Judicial District, at Catbalogan, Province of Samar, on the eighth and ninth days of May, 1907.

Appearances: Mr. Isaac Adams, Mr. Emilio Araneta, Counsel for the government. Mr. J. N. Wolfson, Mr. S. H. Southworth, Counsel for defendant.

J. B. MURPHY, produced and sworn as a witness in behalf of the prosecution, states that he is thirty-six years of age, a married man, by occupation a Major and Senior Inspector of the Philippine Constabulary, a native of the State of West Virginia and a
13 resident of Catbalogan, Samar, P. I.

Direct examination.

By Mr. ADAMS:

Q. How long have you been Senior Inspector of Samar?
A. Since July sixth, 1906; about ten months.
Q. Are you acquainted with the defendant?
A. Yes, sir.
Q. What office was he holding in January, 1907?

Mr. SOUTHWORTH: I object to the question on the ground that it is not the best evidence, as the law requires that an officer of the Constabulary be appointed and therefore the certificate of appointment would be the best evidence.

COURT: Overruled.

Mr. SOUTHWORTH: Exception.

A. Assistant Supply Officer of the Province of Samar.
Q. What was he on the eleventh of January, 1907, and prior to that date?
A. At that time he was an officer of the constabulary on duty in the province of Samar.
Q. What office in the Constabulary was Mr. Harn holding?
A. Second lieutenant on duty in the province of Samar. He was in the act or had just been relieved as Assistant Supply Officer but

all his property accountability had not been turned over. He had not actually been relieved but had been relieved under orders of the Chief of Constabulary.

Q. How long had he been Assistant Supply Officer in the town of Catbalogan, Samar, for the Province of Samar?

A. As far as I know, since July sixth, 1906.

14 Q. Who supplanted him in that office?

A. Sub-Inspector Canuto Jamias.

Q. Who was Supply Officer at that time?

A. Lieut. Louis A. Dowdell.

Q. How long had he been Supply Officer?

A. From, as far as I know, July sixth, 1906.

Q. What were Lieut. Dowdell's duties as Supply Officer?

A. He was paymaster.

Mr. SOUTHWORTH: I object to the question on the ground that the duties of a supply officer are provided by law and therefore the answer would not be the best evidence.

Question withdrawn.

Q. Are you acquainted with the duties of a supply officer?

A. Yes, sir.

Q. Now you may state what the duties of a supply officer in the District of Samar are.

Mr. SOUTHWORTH: Same objection.

COURT: Sustained.

Q. Do you know how the duties of a supply officer on the Philippine Constabulary of Samar on and prior to the eleventh of January, 1907, usually were made known?

A. They were made known by the Regulations of the Constabulary, Manual, general orders, sometimes from the Chief Supply Officer and sometimes from the Auditor for the Philippine Islands respecting the funds, by acts of the Commission, especially the act commonly known as the Accounting Act, and by orders from the Senior Inspector.

Q. Have you under your control the orders, manual, and so forth, of the Constabulary, to which you refer?

15 A. Yes, sir.

Q. Can you produce them in evidence?

A. Yes, sir.

Q. Had Mr. Dowdell under his control at that time,——

Question withdrawn.

Q. Do you know whether Mr. Dowdell had, at that time, under his control any funds belonging to the Constabulary?

A. Yes, sir.

Q. What do you know about that?

A. I know that he had money for the payment of the obligations of the constabulary in the province of Samar.

Q. Do you know when he last received, prior to January eleventh, 1907, funds for the Philippine Constabulary?

A. Yes, sir, I do.

Q. When did he receive them?

A. I would have to refer to some papers.

—. You may do so.

A. I have nothing here.

Q. State as near as your memory will permit.

A. Just prior to January eleventh he received five thousand pesos, Philippine Currency, from the paymaster of the constabulary in Manila.

Q. What do you mean by just prior?

A. A few days previous to that date; just a few days, sir. I would not be positive about the amount.

Q. Do you know in what form that money arrived?

A. The denominations and kind of money I do not.

Q. Do you know, Major, the amount of money Mr. Dowdell had under his control belonging to the Philippine Constabulary,
16 so as to be able to state the minimum amount he had at that time?

A. No, sir, I could not tell.

Q. What do you understand as the minimum amount?

A. The least he had. Not less than a cent.

Q. Can you state an amount that he had at that time? That he had not less than that amount?

A. No, sir.

Q. Looking at your papers, can you not tell now?

A. I could not tell how much he had on hand at that time. I can tell the amount he had the last time I inspected his accounts.

Q. When did you inspect his funds last?

A. I would have to get my reports. They can be brought here and from them I can tell what amount he had on hand.

Q. Then you could tell the maximum amount?

A. Yes, sir.

Q. But I am not asking you for the maximum amount.

A. I cannot say how much he had on hand on that date because I was not in town at that time, as I had just returned from an inspection trip.

Q. Do you know where Mr. Dowdell kept his funds?

A. Yes, sir.

Q. Where did he keep them?

A. In the office which is in the office building here in Catbalogan. He kept them in a field safe. He was in the habit of keeping the funds for the payment of troops and outstanding obligations in one safe and in another safe he kept the funds for which he was not really accountable for by law.

17 Q. But the funds for which he was accountable for by law he kept separate?

A. Yes, sir, in a separate safe. In a safe by themselves.

Q. Where did he keep the safe in which he kept the funds which he was accountable for by law?

A. Just back and to the north of his desk in the office of the Philippine Constabulary of Samar in Catbalogan.

Q. Where was the office at that time?

A. On the first street just north of the building now occupied by the Philippine Constabulary. Just opposite to the house occupied by the Superintendent of Schools, Mr. Hoover, and north of the store known as the Hobson, in the building formerly occupied by the "Tabacalera" and then owned by the "Tabacalera" Company.

Q. What was its situation with reference to the sea?

A. Just on the shore, close to the sea. There were no buildings in the rear of it.

Q. How far is the tide water from it?

A. From the rear of the building about—I would say—ten to twenty yards to the tide water.

Q. Describe the building itself.

A. As to rooms, sir?

Q. Rooms as to their relation to each other both below and above.

A. There are eight different rooms and a long hall and in the rear toward the bay there is a porch. The first room is occupied and known as the Senior Inspector's office. The second room or office is the office of the Supply Officer and is occupied by him, his clerks and assistants. The first room at the head of the stairs
18 is occupied as a store room for arms, ammunition and other ordinance stores for which the Supply Officer is responsible for and the other rooms are used as storerooms for the different offices of the Philippine Constabulary forces of Samar.

Q. How many men are employed in the room where Mr. Dowdell's desk was?

A. Four men. The three were clerks and assistants.

Q. How many rooms are there to the storeroom, the entrance to which you say is at the head of the stairs?

A. Two small rooms and one large room.

Q. What was kept in these rooms?

A. Guns, ammunition and ordinance stores, such as haversacks, canteens, canteen straps, haversack straps, blankets and other numerous stores naturally pertaining to ordinance stores.

Q. Are these particulars that you have mentioned above?

A. Yes, sir.

Q. What was below on the first floor?

A. The commissary sales room in front. The first room in front down stairs. Also quartermaster's wares.

Q. All one department.

A. Yes, sir. The room in the rear is kept for stores such as guns and quartermaster's supplies.

Q. As you enter the building where is the door to these general supplies?

A. Just to the left going in,—just at the bottom of the stairs.

Q. Where is the stairway?

A. Six or seven steps from the entrance from the front door.

Q. Where does it lead to?

19 A. Upstairs. To the offices and storerooms. The storeroom is at the head of the steps.

Q. How is the door of that storeroom kept closed?

A. It is locked with a Yale padlock.

Q. Who carries the key to it?
A. The Supply Officer. Lieut. Dowdell at that time.
Q. Are there any doors in that storeroom?
A. Yes, sir.
Q. Where?
A. One in the hall-way and one in the rear of the porch, and the third in the third room of the storeroom.
Q. How are they kept closed?
A. With Yale padlocks.
Q. Did Mr. Harn have a desk in this main office?
A. Yes, sir.
Q. Had he at this time been relieved of his duties as assistant supply officer?
A. By orders, yes, sir, but he had not completed the transfer of his property. It had been transferred on paper, but had not been actually received by the Sub-Inspector. Yes, sir, it was transferred by invoice but not actually transferred.
Q. By whom was sub-inspector Harn relieved from his office?
A. I don't know him. There is no such a person.
Q. By whom was the defendant relieved from his duties as Supply Officer?
A. The defendant was not a supply officer.
Q. As Assistant Supply Officer?
A. He was relieved as Assistant Supply Officer by Lieut. Jamais.
Q. By whom was that order made?
20 A. By the Chief of the Philippine Constabulary.
Q. Do you know the cause for it?

Mr. SOUTHWORTH: I object to the question on the ground that it is incompetent and immaterial.
COURT: May answer.

A. I don't know the occasion for it.
Q. Do you know whether Mr. Harn intended to leave the service at that time?
A. He, himself, had never told me so but from letters he had sent led me to believe that he did intend to leave.
Q. Where did Mr. Harn live at this time?
A. He lived in Catbalogan on first street in a house between——
Q. Describe it with reference to Constabulary headquarters, the location of which you have already described.
A. Between the third and fourth streets south of Constabulary headquarters in Catbalogan.
Q. Did he live alone?
A. Yes, sir. In a house occupied by himself alone, and his allowance as a Constabular- officer for rent was paying for it.
Q. Did he have a guest about this time?—About the 11th of January, 1907, stopping with him?
A. Yes, sir.
Q. Who?
A. Lieut. then Lieut. MacIlvaine.
Q. How long had he been there?
A. That I could not say, but when I returned from my inspecting

trip out of Catbalogan I found MacIlvaine present in Catbalogan. He was then living in the house of Lieut. Harn as his guest.

Q. What time did you return from that inspection?

A. January ninth.

21 Q. Describe particularly the house in which Lieut. Harn resided.

A. It is a small, two-story house, with a stair-way entering on the north side of it about the center of the building. The rooms are as follows. On entering the stairway there is a narrow hall, the first room in front of the building to the right of these stairs going up is a large room what (is) known as the sala or parlor; the first room off of that is a small bed-room which Lieut. Harn used as a sleeping room. Just back of this bedroom is the kitchen, and between the kitchen and this room there is what you might say a hall and in the rear of that there is a small room used as a muchachos' room. As you pass up the stairs there is a small hall.

Q. As you come up the stairs what is to the left?

A. The kitchen, bath room and water closet.

Q. What is there in the rear of the house upstairs?

A. There is a porch back there in the rear of the kitchen.

Q. Do you know of the disappearance of certain funds of the Philippine Constabulary which were in the custody of Lieut. Dowdell as Supply Officer on or about the 11th day of January, 1907?

A. I know of it from the report of Lieut. Dowdell. The first I knew of it was when he reported to me the loss of his safe and money.

Q. When did he make this report to you?

Mr. SOUTHWORTH: I object to the question, on the ground that the statements of Lieut. Dowdell are not binding as to this defendant.

22 COURT: Sustained.

Q. When did he make such a report to you?

A. On the morning of the twelfth of January, 1907.

Q. Where?

A. In the quarters then and now occupied by Mr. Whittier, then provincial treasurer of Samar. I was eating my breakfast at the time—between seven and eight o'clock in the morning, I am not positive about the exact hour, but it was between seven and nine in the morning—Lieut. Dowdell came in.

Q. Upon receiving that report what did you do?

A. I had not yet completed my breakfast; so I took a little coffee and then I got up and walked around the town thinking about it, and I came around to the first street and I saw the Vizcaya going out of the harbor and I thought of Lieutenant MacIlvaine and if he had left the town, and I found that he had not but was on that boat, and I proceeded to get a barota to go out onto the boat and as the boat was leaving I waived my handkerchief and fired my revolver to attract their attention, and then went out and arrested Lieut. MacIlvaine.

Q. What did you do with Lieut. MacIlvaine?

A. I put him in our boat and sent him to shore with Mr. Scott and I told him to go to the house of Governor Curreny and remain

there. Later, I returned to the boat to get a parcel that belonged to Lieutenant MacIlvaine.

Q. What did you do thereafter?

A. I immediately came ashore then and called Governor Curry and Mr. Hoover and asked them to act as a sort of committee to ascertain by means of the investigation the whereabouts of the safe.

23 Q. In the presence of that investigating committee was Lieut. Harn examined?

A. Yes, sir.

Q. How long did that investigation continue?

A. About two or three days and nights.

Q. Who were the parties that this committee investigated?

Mr. SOUTHWORTH: I object to the question on the ground that it is incompetent who those other parties were outside of the defendant.

COURT: May answer.

A. All the Constabulary officers who were on duty or were visiting or were here in Catbalogan at the time; also all other American officials and civilians living in Catbalogan; all the soldiers on guard on the night of the eleventh and twelfth in the morning all orderlies and other soldiers on different duties in the office of the Constabular Supply Officer.

—. What conversation did you have or directions did you give if any to Lieut. Harn respecting the matter of the investigation?

A. I ordered him to assist in every way in his power to locate the guilty parties, as I ordered all my officers, and after he had testified before this committee I spoke of I ordered him especially to go around and see if he could find anyone who knew anything about it and make every effort to assist me to locate the guilty parties.

Q. What else did you do respecting Lieut. Harn?

Mr. SOUTHWORTH: I object to the question on the ground that it is incompetent.

24 COURT: May answer.

Mr. SOUTHWORTH: Exception.

A. I arrested Lieut. Harn.

Q. On what date?

A. January thirteenth.

Q. That is the day after the investigation begun?

A. Yes, sir.

Q. Where was Lieut. Harn then taken?

A. Taken to the quarters of the Philippine Constabulary now used as a hospital. Part of the hospital of the Philippine Constabulary. I placed him under arrest and guard of an American officer.

Q. From there where was he taken?

A. He was taken to the provincial jail and confined there in a cell.

Q. Under what circumstances was he released?

A. On bond.

Q. Do you know whether any of the funds, or any part of the

funds, reported to you to be lost by Lieut. Dowdell, were ever found?

A. Yes, sir.

Q. Where?

Mr. SOUTHWORTH: I object to the question on the ground that it assumes facts not proven.

COURT: Overruled.

Mr. SOUTHWORTH: Exception.

A. In the quarters and in and around the quarters of Lieut. Harn The quarters then occupied by Lieut. Harn.

Q. Do you mean by the quarters the house?

25 A. Yes, sir, the house. His quarters; his residence.

Q. When were those funds found?

A. On the evening of the eighteenth of January, 1907.

Q. By whom?

A. By myself, Lieut. Juan Sulse, besides a number of soldiers. I don't remember their names.

Q. Was anyone else present?

A. There were present there Col. Bandholtz, now Chief of Constabulary, Capt. Bore.

Q. Anyone else?

A. None that I particularly remember.

Q. Was Lieut. MacIlvaine there?

A. Yes, sir, he was present. He took us down there and showed us.

Q. Where were the funds found?

A. The silver?

Q. Yes, sir.

A. The silver, including the nickel, was found in the water-closet under the house occupied by Lieut. Harn.

Q. Visible?

A. No, sir, it was covered over with a slight covering, and the paper money and some nickel was found above the ceiling in the room where Lieut. Harn used to sleep. It was in a glass jar and in a money-sack. The silver was in sacks and socks.

Q. What was the amount of these funds?

A. The total amount, sir, was nine thousand nine hundred and seventy-one pesos and twenty-six cents (P9971.26).

Q. Was the safe ever found?

A. Yes, sir.

Q. Where?

26 A. In the bay in front of Catbalogan, Samar, but I don't know how far out. The first I saw the safe was in my office. A lieutenant had been detailed by me with a number of soldiers and MacIlvaine to assist in searching for the safe. They went out in the bay looking for the safe and they brought it to my office after it had been found after they had been shown where it was by MacIlvaine.

Mr. SOUTHWORTH: I move to strike out the latter part of the answer on the ground that it is not responsive.

COURT: May strike out last part.

Q. Did you see the safe when it was found?
A. Yes, sir.
Q. How was it? Locked or unlocked?
A. Locked and rusty and very hard to unlock.
Q. What was inside of it?
A. One twenty-five cent piece gold, one ten cent piece, Philippine currency.
Q. By gold piece do you mean coin?
A. I mean American coin—a twenty-five cent piece American silver.
Q. When you arrested Lieut. Harn was anything taken from his person by you?
A. Yes, sir.
Q. What?
A. I refer to a receipt given me by Lieut. Harn: two ten-peso bills; five two-peso bills; one set of keys containing eleven keys and chain. These I took from Lieutenant Harn in the room where he was confined.

27 Q. Are any checks referred to there?
A. I did not find them on his person.
Q. Where did you find some checks, if you found any?
A. I found some checks in his quarters.
Q. Where?
A. He took them from his quarters and gave them to me and told me to keep them for him.
Q. How many?
A. Two, if my recollection is right. I have the numbers and amount of each.
Q. What was the amount of them?
A. I have not the note here. It is in my quarters.
Q. Then you cannot state exact amount?
A. No, sir.
Q. Please state the approximate amounts?
A. The amount of both checks? It was somewhere between two and three hundred pesos.
Q. Can you not state the amount of each check?
A. No, sir, not exactly. I am under the impression that one was for one hundred and eighty-nine pesos and some cents, but I don't remember exactly.
Q. Have you any paper referred to that check?
A. No, not especially to that check, but I have a paper referring to the payment of that check.
Q. What did you do with those checks that you found?
A. I put them all in an envelope along with the other money keys and sealed them in the envelope and placed them in the safe that I have. I put them all in my safe.
Q. Did you do anything else with them?
A. Yes, sir, I turned them over to Mr. Hoover.

28 Q. Both of them?
A. Yes, sir. An order of Lieut. Harn to pay them to Mr. Hoover.

Q. Have you that order?

Mr. SOUTHWORTH: I object to the question on the ground that it is immaterial.

COURT: May answer.

A. Here is a receipt of Mr. Hoover for the money.

Mr. SOUTHWORTH: I reserve the right to object in case the writing is offered in evidence.

COURT: It is so understood.

Q. That paper money that you found in Mr. Harn's house on January eighteenth in his bed room above the ceiling, what kind of money was it?

A. Philippine currency, sir, of different denominations.

Q. About how much Philippine currency was there?

A. Six thousand one hundred and eighty-seven pesos of various denominations, all Philippine currency.

Q. How large were the amounts of the bills? Were there any one hundred peso bills?

A. I don't remember, sir, whether there was, but I think there were some fifty peso bills and a number of ten peso and two peso bills, but I don't remember of any one hundred peso bills.

Q. Were they new or old?

A. Quite a number were comparatively new. Some of them never had been used and were in the original packages as they come from the treasury.

Q. Were they all in packages?

A. Yes, sir, and most were in packages with the original
29 band and check of the treasury department on them. They were in the original packages and appeared to be new bills.

Q. How was the coin, that was found in the water-closet, wrapped up?

A. Loose in sacks and socks, sir.

Q. Describe those sacks.

A. They were the regular money-sacks used in the treasury department in shipping money from Manila to outside stations to hold and keep money in.

Q. Passing to the arrest of Lieut. Harn by your order on Sunday, January thirteenth, 1907, state to the Court why you caused the arrest of Lieut. Harn.

Mr. SOUTHWORTH: I object to the question, on the ground that it is incompetent and immaterial.

COURT: May answer.

Mr. SOUTHWORTH: Exception.

Question withdrawn.

Q. Please state the facts which induced you to cause the arrest of Lieut. Harn on Sunday, January thirteenth, 1907?

Mr. SOUTHWORTH: I object to the question, on the ground that it is incompetent and immaterial.

COURT: May answer.

Mr. SOUTHWORTH: Exception.

A. The facts are that he had made positively no effort to assist me in looking for and getting data regarding the missing safe and funds. From the first, his action the day before and the night before and that morning was unusual. He was not himself,
30 and in the examination before this Board that I spoke of he told a number of things that he had done, and in the investigation I found that he did not tell me all the material acts that he had done.

Mr. SOUTHWORTH: I object to the answer and move to have it stricken out, on the ground that it is incompetent.

COURT: The part of the answer referring to what he found out may be stricken out.

Q. Have you a report of what was stated by Mr. Harn on the occasion of the investigation that you held immediately after the day of the loss of these funds of Lieut. Dowdell's?

A. Yes, sir.

Q. Can you produce it?

A. Yes, sir.

Q. Are the papers that you have in your hand the papers that make up that report?

A. Yes, sir,—Exhibit "D."

Q. Do you know of your own knowledge how Mr. Harn employed himself during the time immediately following the discovery of the loss of the funds, between seven and nine o'clock Saturday morning, January *eleventh*, and Sunday at the hour of his arrest?

A. No, sir, only from report of men I had working on the case. I saw Lieut. Harn at different times in the office and other places around the town, sir.

Q. You stated that there were suspicious circumstances connected with his actions. To what circumstances do you refer. I
31 mean, remember on Friday the day of this loss and immediately thereafter.

A. Lieut. Harn is unusually very frank and outspoken and was regular about his work, but I noticed that on this day he kept away from me. He seemed to be nervous and not himself, which is quite unusual for him.

Q. What particular office did Lieut. Harn hold on Friday, January eleventh, 1907, the date of the disappearance of these funds?

A. He was called the officer of the day, sir.

Q. What do you mean by "the officer of the day"?

A. He is an officer detailed to the duties of officer of the day, which are prescribed in regulations.

Q. What were the duties of the officer of the day at that time in Catbalogan?

A. To see that the guard was properly mounted,——

Mr. SOUTHWORTH: Are these duties prescribed in writing?

A. Yes, sir, in the regulations of the services.

Mr. SOUTHWORTH: If they are prescribed in written regulations the well known rule of evidence that they would be the best evidence.

A. The general duties are prescribed in regulations but the special ones are not.

Q. Will you state what were the duties of the officer of the day in Catbalogan at that time?

Mr. SOUTHWORTH: I object to the question, unless limited to the special duties as mentioned by Major Murphy, the verbal
32 orders given by him in his capacity as Senior Inspector.

COURT: May answer.

A. The duties are to see that the men are present, to inspect the food, the *auertsr,* and see that the guards are posted and understand their duties, and he is responsible for all government property during his tour of duty.

Q. When did Lieut. Harn's duties as officer of the day begin on that occasion?

A. At retreat of the evening before the eleventh of January, 1907.

Q. At what hour is that?

A. Between five and six o'clock. It is different, as it is with the sun.

Q. How long would it last?

A. Until the next evening at the same hour.

Q. How long did it last in this instance?

A. Until between nine and ten o'clock of the evening of the eleventh of January.

Q. Why was it less than the usual period?

Mr. SOUTHWORTH: I object to the question, on the ground that it is immaterial and incompetent.

COURT: May answer.

Mr. SOUTHWORTH: Exception.

A. Because I found Lieutenant Harn in a canteen in the town of Catbalogan—Cadia's canteen, if I am not mistaken.

Q. Leocadia's canteen?

A. Yes. He was having some misunderstanding, as there was some question between him and the police of the town. He and Lieut. MacIlvaine were there, and as he was talking loud I
33 walked over and asked him what he was doing, and he said the policeman was trying to shut the canteen up before the hour, and I asked him what business it was of his, and he said he was not going to allow her to be imposed on, and he appeared to be partly intoxicated and not himself and his conduct not becoming an officer of the day; so I told him to go to quarters under arrest, and report to me in my office the next morning.

Mr. SOUTHWORTH: I object to the answer and move that it be stricken out, as incompetent and immaterial.

COURT: Overruled.

Mr. SOUTHWORTH: Exception.

Q. Had you seen Lieutenant Harn previously that evening? I mean previous to the time at the canteen that you mentioned?

A. Yes, sir.

Q. Where.

A. At the residence of Mr. Hoover, the Superintendent of Schools.

Q. Describe his appearance and actions there.

A. He had on a shirt called Chambrey, and he had a pistol on. His shirt was wet I think from perspiration, and he looked as though he had been doing *to* something to occupy his time, and it seemed somewhat unusual for him to come to Mr. Hoover's house where there were ladies and Governor Curry eating dinner. It seemed to me to be a thing quite unusual for him to do, and under the circumstances I thought something unusual had occurred and that he as officer of the day and he wished to report and I looked at him but he did not say anything and I said nothing myself, but I looked at him as if I would, as if I had something I did not want to tell before the people there.

34 Q. That was between eight and nine o'clock?

A. Yes, sir, and it was unusual for a man to come where there were ladies present at dinner in that condition, and he did — seem to want to tell me anything, and no one had called him there.

Mr. SOUTHWORTH: I object to the answer as immaterial.

COURT: Sustained.

Q. Now, Major Murphy, you may state to the Court whether or not you examined the storeroom, at the head of the stairway, that you referred to, where the ordnance was kept, after learning of the disappearance of the funds and safe?

A. Yes, sir, I did.

Q. What was the result of your personal examination there?

A. I found a number of unusual displacements in the store room.

Q. What did you find?

A. First, I found a lot of excelsior on the floor that I had never noticed before, and I found that a number of canteen-straps and haversack straps which hung on the jam- had been changed, and the cartridge belts which hung there on either side were not there.

Q. That is, the back of the door?

A. In the center of the door and on one side there was a belt and canteen straps hanging there, and in opening the door it had pushed these things out of place where they usually had been placed.

Q. Was there anything on the outside of the door that indicated that it had been opened recently?

A. The padlock on the door had been placed in such a position that the least push it would drop to its usual position. That
35 is to say that it was standing up and it should naturally hang down.

Q. Where does the key enter that padlock, do you know?

A. Yes, sir, I do: underneath.

Q. If it was locked or unlocked to take out the key, where would the padlock be?

A. It would naturally be raised up to insert the key.

Q. That is when it is locked and the key taken out?

A. It is a snap-lock: it locks itself.

Q. If I had been in the storeroom, and go out, and lock the padlock, how, in order to lock the lock, do I have to put the lock?

A. I would raise it up.

Q. Was the padlock in a position that would indicate that it had been raised for the purpose of locking it?

A. Yes, sir.

Q. Was it customary to open that door?

A. I have never known it to be opened during my time since I have been Senior Inspector of Samar.

Q. Have you, as a result of your examination, found any special documents fixing the duties of a disbursing officer?

A. Yes, sir.

Q. Especially a Constabular Disbursing Officer?

A. Yes, sir, I found it in the Manual of the Philippine Constabulary, 1907, by the Chief of the Constabulary.

Q. When was it published? When were they sent out?

A. During 1907; I don't remember the exact date.

Q. Before this event or after it?

A. They were published before the event, but I don't remember the date they were received in the Province of Samar.

36 Q. What else did you find?

A. I found the Accounting Act, and in Constabulary regulations it prescribes the duties of a Supply Officer; also the duties of an accountable officer, as a Supply Officer naturally is.

Q. Have you the Accounting Act?

A. Yes, sir,—1402.

Q. Have you any special orders?

A. No, sir.

Q. All you have, then, pertaining to the duties of a Supply Officer, is Act 1402 and the Constabulary Manuel?

A. Yes, sir.

Q. Was that Constabular Manuel published officially?

A. Yes, sir, it is official matter.

Q. Have you any documents showing the amount of funds that Mr. Dowdell had on hand January first?

A. Yes, sir.

Q. What have you?

A. I have the statement of his funds.

Q. To whom?

A. Lieut. Harn.

Q. What else have you?

A. The inspection of his funds as made by myself on December fourth. I have also an invoice of funds received from the paymaster of the Constabulary to Lieut. Dowdell to the amount of.——

Mr. SOUTHWORTH: I object to that.

Q. What is it?

A. An invoice of public funds from the Constabulary to the Philippine Constabulary of Samar to Dowdell.

Q. From whom to whom?

37 A. A. H. Thomas to Louis A. Dowdell, Catbalogan, Samar.

Q. What is that paper?

A. Retained account current made by Lieut. Dowdell as Supply Officer, Philippine Constabulary of the Province of Samar.

Q. What date?
A. Month of December, 1906.
Q. What date?
A. January eighth, 1907, signed by Lieut. Dowdell in that capacity.

Mr. ADAMS: I offer this document in evidence as Exhibit "I" as one item of evidence to show that Mr. Harn at that time was in debt and that he telegraphed the Major to pay the two hundred pesos. The idea of showing Mr. Harn's indebtedness is to show that in connection with the evidence that he was about to leave the service he had outstanding obligations. Further, to show that the checks found upon him for two or three hundred pesos, as testified to by Major Murphy, were checks which on account of his being in debt, would have been cashed, and their being in his possession would indicate that they were taken from the funds which were in the possession of the disbursing officer who would have been the person most likely to have cashed the same.
Offer withdrawn.

Q. Do you know whether those checks were indorsed?

Mr. SOUTHWORTH: I object to the question, on the ground that the answer would not be the best evidence, as the checks themselves would be the best evidence.
38 COURT: Sustained.

Q. Have you the checks?
A. No, sir, I turned them over, as I testified to Mr. Hoover, on the order you have in your hands from Mr. Harn.
Q. Whose handwriting is this Exhibit "C" in?
A. Lieut. Harn's.

Mr. ADAMS: I offer this exhibit "C" in evidence.
Mr. SOUTHWORTH: I object to the introduction of this document on the ground that it is not signed, and it shows on its face that it is only a part of a letter which it has not been shown was ever sent to anyone, delivered to anyone or received by anyone, and besides there is no date.

Q. Where did this come from?
A. It was found in his quarters. I am not positive just where it was found, but it was brought to me from Lieut. Harn's quarters.

COURT: Objection sustained.

"A"

Mr. ADAMS: I offer this document Exhibit "E" in evidence.
Mr. SOUTHWORTH: I ask the court permission to cross-examine the witness on this document.
COURT: You may do so.

Q. Is this all the testimony of Lieut. Harn that was taken on that occasion?
A. To the best of my recollection, yes.
Q. Who tore this sheet of paper at this place?
A. I did not know until now that it was torn.

39 Q. Did you do it?
A. No, sir.
Q. Do you know who did it?
A. No, I do not.
Q. You did not see it done?
A. No, sir.
Q. Then you don't know whether this was the last question and answer given or not?
A. I remember that it was the last question and answer.
Q. Were you present at this examination?
A. Yes, sir.
Q. How was he examined?
A. He was called in there before the board that I spoke of and asked questions by myself and Governor Curry and also Mr. Hoover and myself, sir.
Q. Who called him in there?
A. I did, I think, but I am not positive which one of us.
Q. You were conducting the examination, were you?
A. Yes, sir.
Q. Did you send for Lieutenant Harn?
A. Yes, sir.
Q. Did you ask him to make a statement?
A. We told them the object of the investigation and we told them we would call them in afterward one at a time, and then proceeded with the investigation, asking questions.
Q. Were you the one to call Lieutenant Harn in to make this statement?
A. First we called them all together and explained to them that the object was to find out all we could, by asking questions of
40 everybody, and do the best we could to find out about the loss.
Q. And you made that statement to all of them when you called them in?
A. Yes, sir.
Q. Did you not tell them that whatever they said there would be used against them?
A. I don't remember telling them that.
Q. What did you tell them in regard to what they said?
A. I don't remember what was said, as we all talked.
Q. Did you not say anything about the object of the investigation?
A. I did as I stated before.
Q. How was that testimony taken?
A. It was taken by a stenographer.
Q. Taken by a stenographer in shorthand?
A. Yes, sir, and written by him.
Q. By whom?
A. By himself and others that assisted him.
Q. By the stenographer?
A. Yes, sir, and if I am not very much mistaken that is the testimony I asked Lieut. Harn to assist the stenographer in writing up after the investigation. I asked Lieut. Harn to assist in writing up the testimony after the investigation was completed.

Q. Were you present.
A. Yes, sir, in and out.
Q. Did you see Lieut. Harn when he was writing on this testimony?
A. Not that particular testimony.
41 Q. Do you know whether this is a copy of the original taken down by the stenographer
A. That is the original, taken down in shorthand by the stenographer and then copied on the typewriter.
Q. Did the stenographer write this?
A. I am not positive.
Q. Then you don't know who wrote it?
A. I know.
Q. Were you present during the whole time the testimony was being written on the typewriter?
A. Not all the time.
Q. How much time was you?
A. I don't remember how much.
Q. Then you cannot state whether anybody else wrote on the typewriter during the time that this was being copies?
A. No, sir.
Q. Then you cannot state by whom this was written, that is, of your own knowledge?
A. I cannot.

Mr. SOUTHWORTH: I object to the introduction of this document, on the ground that it is not signed by the defendant, because it is not in the handwriting of the defendant and because it was taken by a stenographer in shorthand and copied by some one the witness does not know and because it is not authenticated by an official stenographer, and because the witness cannot state that this was all the testimony which was given by Lieut. Harn on that occasion.
Introduction withdrawn.

42 Q. Major, what is that document marked Exhibit "D"?

Question withdrawn.
Q. Do these papers marked Exhibit "D" constitute all the testimony by Lieut. Harn on that occasion?
A. To the best of my knowledge, yes.

Mr. ADAMS: Offer continued.
COURT: Ruling reserved.

Q. In the course of that investigation was or was there not anything said by Lieut. Harn respecting the matter of his removing from the armory in the constabulary building two boxes such as petroleum is originally packed in, from that armory to his house, between the hours of six and seven o'clock on the night of January eleventh?

Mr. SOUTHWORTH: I object to the question, on the ground that the testimony given in that examination was taken in writing, and therefore that would be the best evidence.
COURT: Overruled.

Mr. SOUTHWORTH: Exception.

A. I don't know, sir.

Mr. ADAMS: I offer Exhibit "E" in evidence.
COURT: Admitted without objection.
Mr. ADAMS: I offer in evidence document marked Exhibit "F."
Object- to the introduction of the document marked Exhibit "F," on the ground that it is not signed by the defendant.
COURT: Objection overruled.
Exhibit "F" admitted.

Mr. ADAMS: I offer this document, marked Exhibit "G"
43 in evidence.

Mr. SOUTHWORTH: I object to its introduction, on the ground that no proper foundation has been laid for its introduction, in that it has not been shown that the document was signed by the defendant Wilson W. Harn and it does not purport to be signed by the defendant.
COURT: Objection sustained.

Q. Look at this Exhibit "G." Whose signature is this?
A. Harvey Adams, Third Lieutenant, Philippine Constabulary. He examined the funds and made this report. He was the ranking officer in the post outside of the Accounting Officer, as I was absent; so he made the inspection for me as Senior Inspector and this is his report of the inspection. The sum as shown there is the amount of funds Lieut. Dowdell had on hand at that time, which corresponded to the Account Current Exhibit "E," and is the same amount of funds.

That is all.

Cross-examination.

By Mr. SOUTHWORTH:

Q. Major Murphy, you stated that you were out of this town some days prior to this alleged robbery.
A. Yes, sir.
Q. How long were you gone?
A. I left Catbalogan on the twenty-second of December, 1906, and returned January eighth, 1907, in the morning.
Q. Then you were not in this town from December twenty-second. until January eighth, were you?
44 A. No, sir.
Q. Do you know what funds Lieut. Dowdell disbursed on account of the government during that period?
A. No, sir.
Q. Did you make any examination of Lieut. Dowdell's funds before leaving here on December twenty-second, 1906?
A. Just before leaving, no, but just prior to that time I did.
Q. Did you make any examination of them on that date, the twenty-second of December?
A. Not on that date, sir.

Q. Do you know of your own knowledge what funds he had on hand on December twenty-second?

A. No, sir.

Q. You don't know how much he disbursed during your absence, do you?

A. No, sir.

Q. Then you don't know what funds he had on hand when you returned, do you?

A. No, sir.

Q. You don't know of your own knowledge whether he had any funds on hand on January eighth, do you?

A. No, sir.

Q. Major Murphy, you said you did not examine the money,——

Question withdrawn.

Q. Do you know of your own knowledge that Lieut. Dowdell received any funds from the government between January eighth and January twelfth?

A. No, sir, I do not.

Q. You spoke of seeing some money in the house of Lieut.
45 Harn consisting of pesos and bills, Philippine currency. Did you recognize any of those pesos as being the government's pesos?

A. I recognized them as being Philippine currency.

Q. Did you recognize them as belonging to the government, as Constabulary funds?

A. No, sir.

Q. Did you recognize any of these bills as being Constabulary funds of the Philippine Government?

A. No, sir.

Q. Did you recognize any of that currency as being the property of the Constabulary of the Philippine Government?

A. No, sir.

Q. Then of your own knowledge you don't know that any of that money was money of the Constabulary of the Philippine Government?

A. I do not, sir.

Q. Now, Major Murphy, you testified, did you not, that this safe was found in the bay out here. Were you present when it was found?

A. No, sir, I was not.

Q. Do you know of your own knowledge that it was found there, or where it was found?

A. No, sir.

Q. Then when you testified that it was found out there you testified from what you had heard?

A. It was reported to me.

Q. Did you testify that you saw it found?

A. No, sir.

Q. But you testified that it was found out there?

46 A. I testified that it was reported as found out there.

Q. You don't know by your own knowledge where it was found?

A. No, sir.

Q. From this report, Exhibit "E," Major Murphy, what part of the P16632.68 belonged to the barrack- and quarters fund?

A. P10087, Philippine currency.

Q. Where was that appropriation for barracks and quarters fund kept? Was it not kept in the bank in Manila?

A. I would have to see my papers to answer that question, to see what was the amount on deposit at that time. But what special fund was on deposit with the Treasurer at that time, I could not answer that question.

Q. Where was the appropriation for barracks and quarters kept?

A. As I said before, I cannot answer where it was kept.

Q. Where were the funds for the payment of barracks and quarters kept?

A. Some was kept in the Constabular- Supply Officer's safe for immediate disbursements and the other deposited with the Treasurer of the Philippine Islands.

Q. It was Lieut. Dowdell's duty as Disbursing Officer and Supply Officer to disburse this money for the government for the Philippine Constabulary from time to time, was it not?

A. Yes, sir.

Q. And this money was paid out sometimes daily, and sometimes several times a day, was it not?

A. Yes, sir.

Q. And that money was turned over to him as Supply Officer to be used in disbursements on account of the Philippine Constabulary of the government, was it not?

A. For the Province of Samar, yes.

47 Q. Now, Major Murphy, when was this investigation held in reference to this alleged loss of funds?

A. January twelfth. Part of that day, and continued on until completed.

Q. When did you arrest Lieut. Harn?

A. I don't remember the exact hour and time.

Q. It was on Sunday, was it not?

A. It was Sunday evening, if I remember rightly.

Q. Is it not a fact that between the time that you had this investigation on the twelfth to the time that you arrested Lieut. Harn on the thirteenth he was engaged in copying this testimony, which had been taken in the investigation which you had held, on the typewriter?

A. Part of his time was engaged in that, sir.

Q. Well, you saw him several times during that interval engaged in that business, did you not?

A. Yes, sir, several times when I passed from one office to the other, and when going in and out.

Q. Do you know how much of his time was engaged in that business from the time on the twelfth until he was arrested on the thirteenth?

A. I remember when I arrested him I called him from that occupation.

Q. At the time you arrested him he was copying?

A. Yes, sir.

Q. Do you know how long he had been engaged that day in the office on that work?

A. I could not say the exact number of hours, no, sir.

Q. Do you know whether he had been engaged the day before, or part of it?

48 A. He had not been engaged so on the eleventh, because we had not done anything.

Q. I did not ask you about the eleventh. We were talking about Sunday, the thirteenth, and the twelfth was the day before.

A. I don't remember that he was.

Q. You don't remember whether he was or not?

A. I don't think he was.

Q. Have you any recollection of it?

A. No, sir.

Q. Then you ordered Lieut. Harn to take charge of Lieut. Dowdell, did you not?

A. I believe that I did.

Q. That was the morning after you discovered the loss of the safe?

Question withdrawn.

Q. The morning that you discovered the loss of the safe, was it not?

Q. Yes, sir.

Q. That was on the twelfth, on Saturday?

A. Yes, sir.

That is all.

49 JUAN SULSE, produced and sworn as a witness in behalf of the prosecution, states that he is thirty-three years of age, a married man, by occupation a Second Lieutenant of Constabulary, a native of Taft, Province of Samar, and a resident of the municipality of Catbalogan of the same province.

Direct examination.

By Mr. ADAMS:

Q. Lieut. Sulse, were you in Catbalogan on January 11 and 12 on the occasion when a certain filed safe disappeared from the office of the Supply Officer, Mr. Dowdell?

A. No, sir, I was not in Catbalogan. I was in Calbayog at that time.

Q. When did you return to Catbalogan?

A. About the sixteenth, I think.

Q. Well, do you remember, shortly after your return, going to the house that had been occupied by Lieut. Harn, going in company with Colonel Bandholtz and Major Murphy?

A. Yes, sir.

Q. What occurred at the house of Lieut. Harn on that occasion?

A. On the eighteenth of January I was the Officer of the Day when Colonel Bandholtz and Major Murphy and Lieut. MacIlvaine ordered me to take a big lamp, because it was about five-thirty. I don't remember about that time, but they ordered me to take a lamp from the headquarters and bring it to Lieut. Harn, and after that Major Murphy went up into the house, and after a few minutes he came back and went to the side of Lieutenant Harn's house, and went into a bad place there and found the money there. Lieut. MacIlvaine showed the money.

Q. Did you see the money?

50 A. Yes, sir, after it was found.

Q. In the sacks?

A. Yes, sir.

Q. How many sacks?

A. In money sacks.

Q. Do you know of any other money being found in that house at that time?

A. No, sir. I heard, because I did not enter the house, because Major Murphy ordered me to guard the money.

Q. Do you know anything about the finding of the safe the next day?

A. Yes, sir.

Q. What do you know?

A. The next day, the nineteenth, Major Murphy took me and Lieut. MacIlvaine and we went into a small barota in front of the headquarters building and Lieut. MacIlvaine showed us the place where he put the safe, and I did look around there with a few soldiers, about maybe more than an hour, but did not find the safe, and Major Murphy and Lieut. MacIlvaine came back to the shore, leaving me there.

Q. With whom?

A. The soldiers.

Q. So Mr. MacIlvaine also left there?

A. Yes, sir, he came back with Major Murphy.

Q. He came back with Major Murphy?

A. Yes, sir, he came back with Major Murphy.

Q. And you staid there alone?

A. Yes, sir, with some soldiers.

Q. Go on.

51 A. I made a long rope like a fish-hook, or line, you know, and put the soldiers out with that rope, and after about half an hour in the same place in front of the headquarters building I found the safe and brought it to Major Murphy, and I put it in the treasurer's office, and he came to the treasurer's office and send the safe back to the headquarters, and when the safe is back in the headquarters building it was opened by Major Murphy and Mr. Berry the Auditor, and they found in the safe one twenty-five cent. gold and five cents Conant.

Q. Was there nothing else in the safe?

A. Nothing else. Nothing more. I left the safe in the headquarters, by Major Murphy's orders.

Q. Was that the safe which disappeared from behind Lieut. Dowdell's desk?

A. I think so, because Lieut. MacIlvaine told us the safe was there.

Mr. SOUTHWORTH: I move to strike out the last part, on the ground that it is hearsay.

COURT: Strike it out.

Q. At the time you brought the safe up was there any other safe behind the desk or at the side of the desk of Lieut. Dowdell?

A. I don't remember.

That is all.

No cross-examination.

52 LOYD W. BERRY, produced and sworn as a witness in b-*ah*lf of the prosecution, states that he is thirty-four years of age, a single man, by occupation District Auditor, a native of the State of New York and a resident of Tacloban, Province of Leyte.

Direct examination.

By Mr. ADAMS:

Q. How long have you been engaged as District Auditor in the Philippine Government?

A. November 2, 1905, in the Auditor's Office, and as District Auditor since May 29, 1906.

Q. When did you first come to Catbalogan?

A. In June, 13 or 15, 1906.

Q. In what capacity?

A. District Auditor.

Q. Were you in Catbalogan during the month of January, 1907?

A. Yes, sir.

Q. You knew of the circumstances of the disappearance of the safe in the office of the Philippine Constabulary at that time in the office of Mr. Dowdell?

A. Yes, sir.

Q. What do you know about the matter? Of your own knowledge?

A. I arrived the day after the disappearance, and received word from the Auditor by telegram that there had been a robbery there and directing me to make an investigation. I cam- to the Constabulary headquarters and went upstairs and met the governor.

Q. Did you call Mr. Dowdell?

A. As I came in I met Mr. Dowdell on the stairs, and he said, "I suppose you have heard of the robbery?" He was going down.

53 Mr. SOUTHWORTH: I object to what Mr. Dowdell said.

COURT: Strike it out.

Q. Did you enter the room where Mr. Dowdell had been?

A. Yes, sir.

Q. Had you ever been in that room before?
A. Yes, sir.
Q. Do you know where he kept the safes in which he kept the funds?
A. Yes, sir, he pointed it out to me.

Mr. SOUTHWORTH: I object, as acts are as objectionable as words.
COURT: Sustained.

Q. Were there any safes near Mr. Dowdell's desk?
A. Yes, sir.
Q. How many?
A. Two.
Q. At the time that you went in there?
A. One.
Q. Did you assist or were you present, or take any part, in the unlocking of a safe in that office on that day or some days thereafter?
A. Yes, sir; not that day, but some days thereafter.
Q. How many days, or when?
A. The nineteenth of January.
Q. What was the condition of that safe that you unlocked—the condition when you first saw it?
A. It was stained as if it had been wet, not rusty exactly, but it had marks on it as if it had been wet, and when I opened it I found in it twenty-five cents, United States currency—I opened it
54 with a key, at least Major Murphy and I unlocked it—one ten cent, United States currency, and one ten cent piece, Philippine currency. Nothing else. Those coins were stuck down at the bottom as though they had been wet.

Mr. SOUTHWORTH: I object to the words "as though they had been wet."
COURT: Strike them out.

Q. Were you present the day prior to the time you opened that safe, when some money was brought from the house of Lieut Harn?
A. I met the party coming along the street, just in front of this building.
Q. On first street?
A. Yes, sir, coming along from the south; perhaps five or six Constabulary soldiers, Major Murphy, Col. Bandholtz and I went with them to the Provincial Treasurer to put the money in the safe for the night, as it was after dark.
Q. What had they?
A. They had sacks of money; sacks containing money.
Q. How much money?
A. One sack contained a glass jar and it had money inside of it,—bills inside of it—and a sack containing five cent pieces and the jar contained bills of various denominations, amounting in all to six thousand one hundred and eighty-seven (P6187) pesos. In this sack containing the glass jar there was a sack containing five cent pieces, in all twenty-five pesos. One sack contained ten cent pieces, fifty pesos in all: one sack contained twenty-cent pieces,

one thousand pesos in all; one sack containing five cent pieces, twenty pesos in all; one sack of twenty-cent pieces, in all one
55 hundred pesos; one sack containing fifty cent pieces, five hundred pesos in all; one sack one thousand pesos in all, and one sack containing one thousand pesos in all; and one sack containing various coins, in all eighty-nine pesos and twenty-five cents, making a total of nine thousand nine hundred and seventy-one pesos and twenty-six cents (P9971.26).

Q. What portion of that was coin?

A. There was two thousand seven hundred and ninety pesos and twenty-six cents in coin (P2790.26).

Q. Is two thousand seven hundred and ninety pesos and twenty-six cents and six thousand one hundred and eighty-seven pesos, nine thousand nine hundred and seventy-one pesos and twenty-six cents?

A. Yes, sir.

Q. What kind of sacks was that money contained in?

A. The glass jar was in a thousand peso sack, the kind of sack used for one thousand pesos and the twenty-cent pieces, one thousand in all, and the pesos were in a one thousand peso sack; a small sack contained ten cent pieces and the five cent pieces, twenty pesos in all, were in a stocking. The silver instead of being P2790.26 is P2784.26.

Q. What shape was the paper money? What kind of paper money was it? Describe it.

A. The packages were of all sorts, containing ten, five and twenty peso bills. I separated them and put them in various packages according to denomination.

Q. Were they in packages?

A. Yes, sir; that is, they had a rubber band on them.

Q. Ordinary bands?

A. Yes, sir, ordinary small bands like this (indicating a
56 small rubber band).

Q. Did you audit the accounts of Mr. Dowdell?

A. I examined them, yes, sir.

Q. When?

A. On the thirteenth of January.

Q. What balance did Mr. Dowdell's account show?

Mr. SOUTHWORTH: I object to the statement regarding Mr. Dowdell's accounts, on the ground that Mr. Dowdell is not on trial, and the defendant is indicted as a principal and not as an accessory.

COURT: May answer.

A. His accounts showed that he should have on hand,——

Mr. SOUTHWORTH: I object, on the ground that if it is in writing we want the writing and not the statement.

COURT: If he has it in writing he may give it.

Q. Have you any written statement showing the amount of money then?

A. Yes, sir.

Q. May I see it?

A. Here it is.
Q. To whom was that, your report, rendered?
A. To the Auditor.
Q. What part of that report (Exhibit "J")—State to the Court what the paper or papers marked Exhibit "J" is.
A. It is my report to the Auditor.
Q. Does it show the balance of funds in the office of Mr. Dowdell on that date or what should have been?
57 A. Yes, sir.
Q. What date is it?
A. January sixteenth.

Mr. ADAMS: I offer this document in evidence.
Mr. SOUTHWORTH: I desire to ask the witness a preliminary question or two as to the admissibility of the document.

Cross by Mr. SOUTHWORTH:

Q. Is this document signed by you, Mr. Berry?
A. If it is signed, it is signed by me.
Q. I ask you to look and see.
A. No, sir, it is my office copy.
Q. Where is the original?
A. It is with the Auditor.
Q. Then this is a copy and not an original?
A. It is a carbon copy.
Q. And the original is on file with the Auditor in Manila?
A. Yes, sir.

Mr. SOUTHWORTH: We object to the introduction of this document, first, on the ground that the books of the Supply Officer is the best evidence of the amount of money on hand, and second, because the document offered in evidence is a copy, and the original has not been shown to have been lost or destroyed.
COURT: Objection overruled.
Mr. ADAMS: I withdraw the offer, and return to the question with reference to whether the witness can state, from the examination made of the accounts of Mr. Dowdell, the balance for which Mr. Dowdell was indebted to the Government, as shown by the books on January eleventh, 1907.
58

Q. Mr. Dowdell as Supply Officer kept books in his office?
A. Yes, sir.
Q. Papers, vouchers, and so forth?
A. Yes, sir.
Q. You examined the books, vouchers, accounts, and so forth?
A. Not his books.
Q. You did not examine the books?
A. No, sir.
Q. You did not make any statement from his books?
A. From his accounts, but not his books.
Q. Where are those accounts?
A. One copy is on file in the Constabulary Headquarters.
Q. Where are the original accounts?

A. They are made out in triplicate. One copy is sent to the Auditor, one copy to the District Headquarters and one copy is kept by the officer.

Q. You have none of those accounts here, have you?

A. Yes, sir, I have Mr. Dowdell's account from January first to January eleventh.

Q. Now, the statement you are asked to testify about you made up from Mr. Dowdell's account, did you not? Just answer my question.

—. ——.

A. I ask you, Have you made up a statement from those accounts to which you referred that were filed in the different offices as you have described. I ask you a mere question.

59 A. Partially.

Q. Where did you get the other information?

A. From the papers in Mr. Dowdell's office which he presented to me.

Q. Where are those papers?

A. On file with the accounts.

Q. Where?

A. One copy in the office of Mr. Dowdell, one copy in the Auditor's and one copy in District Headquarters.

Q. All those papers are filed then in the different offices as you have described?

A. Yes, sir.

Mr. SOUTHWORTH: I object to the question, on the ground that this information to which Mr. Berry is asked to testify regarding papers which are on file in the Auditor's office, and in the other offices in the Philippine Islands as stated, because the originals have not been shown to have been lost or destroyed.

COURT: Overruled.

Mr. SOUTHWORTH: Exception.

Q. State the amount. How much did he owe the Government?

A. There was due the Government twenty-three thousand seven hundred and eighty-one pesos and forty-four cents (P23,781.44).

Q. What credits was he entitled to?

A. He had a balance with the Insular Treasurer of Ten thousand two hundred and fifty-nine pesos and thirty cents (P10,259.30).

Q. What balance was due the Government after the above amount was credited?

60 A. Thirteen thousand five hundred and twenty-one pesos and forty-four cents (P13,521.44).

Q. What date?

A. Date of examination, January thirteenth.

Q. After that ten thousand or rather nine thousand nine hundred and seventy-one pesos and twenty-six cents (P9,971.26) was deposited in the safe of the treasurer, on the evening of January eighteenth; what was done with it?

A. It was put in the safe and the safe was locked and I sealed it.

A. After that what was done with it?

A. The next day—on the nineteenth—I officially seized it, as District Auditor under provision of law authorizing me to do so.

Q. After that what was done with it?

A. I broke the seal in the presence of witnesses and took out the money and counted the money and verified it and put the money in sacks, and put it back in the safe and sealed it.

Q. After that what did you do with it?

A. It was in my possession officially until I turned it over to Lieutenant Canust on the authority of the Auditor.

Q. What date did you turn it over?

A. The twenty-third of January.

Q. Was there any cash on hand on the occasion of your examining those accounts on January thirteenth?

A. There was Mr. Dowdell's subsistence funds.

Q. How much?

A. One thousand one hundred and forty-seven pesos and twenty-one cents (P1,147.21).

61 Q. This balance showing a balance of thirteen thousand and some hundred pesos due the government, is he credited with the last sum?

A. No, sir.

Q. Crediting him with the last sum as well as with all other credits that he had and was entitled to, as shown by his books and accounts, how much was he indebted to the government?

A. That was of other funds he was indebted for.

Q. You may state what Exhibit "H" is.

A. Exhibit "H" is an invoice of the funds from the paymaster of the Philippine Constabulary to Lieut. Dowdell as Supply Officer.

Q. What date?

A. January third, 1907.

Mr. ADAMS: I offer Exhibit "H" in evidence.

Mr. SOUTHWORTH: We object to the introduction of the document, on the ground that the defendant nor Dowdell is a party to the document, because it is not signed by either Dowdell or Harn. It is immaterial and irrelevant, and this document does not show that Dowdell ever received the amount in this document.

COURT: Objection sustained.

Q. In auditing his accounts on January thirteenth did you charge him with any money received by him from the paymaster of the Philippine Constabulary, Manila, during the month of January?

A. Yes, sir, I charged him with an invoice which he pre-

62 sented to me.

Mr. SOUTHWORTH: I object to Mr. Dowdell's actions or words. I ask that it be stricken out.

COURT: Strike out "he presented to me."

Q. Where did you get the invoice that you charged him with?

Mr. SOUTHWORTH: I object.

COURT: Overruled.

A. From Mr. Dowdell.

Q. What did that invoice call for?

Mr. SOUTHWORTH: I object to the question, on the ground that the answer would not be the best evidence.

Q. Is this a copy?
A. It is.
Q. What did that invoice call for?

Mr. SOUTHWORTH: I object to the question, on the ground that the answer would not be the best evidence.
COURT: Sustained.

Q. Do you know how much you charged him with as money having been received during the month of January previous—a day or two—previous to January thirteenth?
A. Yes, sir.
Q. How much was it?
A. Nine thousand one hundred and seventy-eight pesos and eighty-one cents (P9,178.81).

Mr. SOUTHWORTH: We object to witness reading from the paper in his hand.

63 That is all.

Cross-examination.

By Mr. SOUTHWORTH:

Q. Berry, I believe you said you arrived here on the twelfth of January.
A. Yes, sir.
Q. How (lon-) since you had been in Catbalogan before?
A. I left Catbalogan on the twentieth of December.
Q. Between the twentieth of December and the twelfth of January you had not examined Mr. Dowdell's accounts, had you?
A. No, sir.
Q. Did you examine to see what money he had in his safe between the twentieth of December and the twelfth of January?
A. No, sir.
Q. Do you know of your own knowledge that he, on the first day of January, had a dollar in the safe?
A. No, sir.
Q. Do you know that on the eleventh of January he had a dollar in his safe?
A. No, sir.
Q. Now, you state that there should have been, according to your examination of the books and papers and documents, a balance of about thirteen thousand five hundred pesos on the eleventh or twelfth of January.
A. Yes, sir, the thirteenth.
Q. Some of that money was in checks, was it not?
A. I don't know.
64 Q. Have you found any checks which represent any part of that fund, in your investigation?

A. I have not; that is impossible.

Q. If Mr. Dowdell had cashed checks, and put them in the safe in lieu of money, it would have been impossible for you to have determined it?

A. I don't understand the question.

Q. You answered that it would be impossible to be in checks. Now, if Mr. Dowdell had cashed checks with a part, or all, of this money—the money that you say he ought to have on hand—now if Mr. Dowdell had cashed checks with a part or all of this thirteen thousand five hundred pesos, which you say ought to have been in the safe on the thirteenth of January, could you have determined it?

A. If I had found the checks there, yes, sir.

Q. Suppose he had cashed checks and put them in there, in lieu of the money, and the checks had been taken, could you tell whether it was checks or money which was taken on the eleventh of January?

A. No, sir.

Q. No way of determining?

A. No, sir.

Q. Then of your own knowledge you don't know that there was one peso of the Government's money in that safe on the eleventh of January?

A. No, sir.

Q. You say that you saw some money, represented by bills and different coins, which was being brought from the south by some policeman and other parties about the nineteenth of January—the eighteenth or nineteenth—did you not?

65 A. Yes, sir.

Q. Did you recognize any of those pesos or bills as money belonging to the Philippine Constabulary?

A. No, sir.

Q. Just ordinary, everyday looking money?

A. Yes, sir.

Q. Like every other pesos?

A. The same currency.

Q. You said it was in some sacks, did you not?

A. Yes, sir.

Q. There was nothing about those sacks that indicated that it belonged to the Philippine Constabulary, was there?

A. No, sir.

Q. They were the same sacks that are used in keeping money in?

A. Yes, sir. Treasurer sacks with the exception I spoke of—the small stocking sacks.

Q. You did not recognize Philippine Constabulary on the stocking, did you?

A. No, sir.

Q. Nothing to indicate that they belonged to the Philippine Constabulary, was there?

A. Not that I know of.

Q. In making your accounts you had charged Mr. Dowdell with an invoice of ninety-one hundred pesos and some odd pesos?

A. Yes, sir.

Q. You were not present when Mr. Dowdell received that money, if he ever did receive it, were you?
A. No, sir.
Q. You do not know of your own knowledge that he ever
66 did receive it, do you?
A. It depends on what you mean by my own knowledge.
Q. It means you being present when he received it.
A. No, sir, I was not present.
Q. You did not turn it over to him?
A. No, sir.
Q. You were not in Catbalogan from the twentieth of December until the twelfth of January, were you?
A. No, sir.

That is all.

67 IGNACIO DILAO, produced and sworn as a witness in behalf of the prosecution, states that his age is unknown, that he is a single man, by occupation a Constabulary soldier.

Direct examination.

By Mr. ADAMS:

Q. How long have you been a Constabulary soldier?
A. Five years.
Q. Were you here in Catbalogan on the eleventh of January of this year—1907?
A. Yes, sir.
Q. On that date did you have any special service here in Catbalogan?
A. Yes, sir.
Q. What duty?
A. On that date I was ordered by Lieut. Dowdell to clean up the armory room and I cleaned it up.
Q. Why did Lieut. Dowdell order you to do that on that date? Were you on special service that date?
A. It was my regular duty to look after the armory room, and clean it up at Mr. Dowdell's service.
Q. How long had you been at that time in the service of Mr. Dowdell at Catbalogan?
A. Ever since his arrival in Catbalogan.
Q. You said that on the morning of that date you cleaned the armory of the headquarters of the Constabulary in Catbalogan. In whose charge was the armory?
A. Lieut. Dowdell, but I was the one who had charge of cleaning it up.
68 Q. Did you clean the armory that date?
A. Yes, sir.
Q. Until what hour were you cleaning the armory?
A. It was his order for me to stay there until twelve o'clock, but I think it was sometime before twelve when I left there that day and closed the armory.

Q. Did you lock the armory or leave it unlocked when you left there?

A. I had no key, but the door is closed with a padlock, and opens with a key.

Q. How many doors are there in that armory?

A. Three.

Q. How many doors of entrance has it?

A. Two, but *th*at that time both were closed.

Q. The small door that you mentioned, does that open on the inside of the building,—the door which you said was closed that morning?

A. Yes, sir, it opened toward the kitchen.

Q. Was that small door which you found closed that morning always closed on other mornings?

A. Sometimes it was open and sometimes not, but it was open if I was there.

Q. I refer to the door which you say opens into the kitchen, and I ask you the question if that door is always closed or not?

A. It is always closed. It was closed that morning, but sometimes it was opened, but I cannot state upon what occasion it was opened.

69 Q. On the occasions that the door is open it leads out into the kitchen. Who generally opens it?

A. Sometimes I would open it, if the key was given to me. But I could not say whether it was opened when I was not there or not.

Q. Who give you the key to open that door?

A. Lieut. Dowdell: he had the key.

Q. Then Lieut. Dowdell always had the key?

A. Yes, sir.

Q. At the time that you referred to, January eleventh, was the door, which faces the head of the stairs of the headquarters building closed and locked?

A. Yes, sir, I closed it.

Q. With a key or not?

A. It does not need a key to lock it: the lock is a spring lock and springs shut.

Q. Did you spring the lock shut when you left?

A. Yes, sir, and I tried it to see if the lock had caught.

Q. Who had the key of that lock?

A. Lieut. Dowdell.

Q. When you left that armory on the night of January eleventh this year was there any person left in the headquarters building?

A. Yes, sir; Lieut. Dowdell and Lieut. Harn were still there. I saw them when I left. I don't know who else was there.

Q. How long were you away from the headquarters building after you left it that noon?

A. I did not count the hours I was away, but I think it was some time after three o'clock in the afternoon that I returned.

70 Q. When you arrived at the headquarters building on January eleventh were there any persons already there?

A. Yes, sir.

Q. Who were the persons who were there?
A. Lieut. Dowdell was the first man I saw. The door of the armory was open and he was inside. He called me and told me to take an ammunition box and take it to Lieut. Burbank's room; another room.

Mr. SOUTHWORTH: I move the court to strike the last part of the answer out.
COURT: Motion sustained.

Q. Were there any other persons at the headquarters building when you arrived that afternoon?
A. Gregorio Donseras and Maximo Bauer.
Q. Did you see Lieut. Harn in the building that afternoon?

Mr. SOUTHWORTH: I object to the question, on the ground that it is leading.
COURT: Sustained.

Q. Did you see Lieut. Harn that afternoon?
A. Yes, sir, when I arrived at the headquarters building that afternoon I did not see him, but when I had been there a while I did see him.
Q. Where did you see him?
A. I saw him in his office in the headquarters building of the Constabulary in Catbalogan.
Q. Did you speak to Lieut. Harn on that occasion?
A. I spoke to him as I was leaving the building. I don't know exactly what hour it was, but it was after retreat. I asked his permission to sleep in the house of my washwoman. He asked me if she was my wife and I said, "No, only my washwoman."
71 Q. Did he grant you that request?
A. Yes, sir.
Q. What was the last thing you did that afternoon before asking this permission of Lieut. Harn?
A. I was taken by Lieut. Dowdell down underneath the building to get some boxes in which coaloil had been stored.

Mr. SOUTHWORTH: I object to this testimony.
COURT: Strike it out.

Q. Before leaving the headquarters building that afternoon did you enter the commissary of the headquarters?
A. I went in there three times. I went in to get some boxes and something to cover them with, and to get some nails.
Q. How many boxes did you get from the commissary that afternoon?
A. Two.
Q. Were those boxes empty or not?
A. They were empty. They originally contained coal oil, but Lieut. Dowdell ordered me to put rubbish into them.

Mr. SOUTHWORTH: I move the court to strike out.
COURT: Strike out what was told him.

Q. Did you put anything into those two empty boxes?

A. I put rubbish in them and took them upstairs.
Q. Where did you take them to?
A. Into the armory, the first room.
Q. The second time you went downstairs into the commissary what did you do?
A. I went to get some boards to cover those boxes.
Q. How many covers did you get from the commissary?
72 A. One coal-oil box, with no bottom or top in it, and it was used for covers.
Q. Where did you take those covers?
A. To the same place that I took the two boxes—to the armory.
Q. What did you do in the commissary the third time you went down there?
A. I went to get some nails from Lieut. Jamias.
Q. Did Lieut. Jamias give you the nails?
A. Yes, sir.
Q. How many nails did you get?
A. I don't think they were all the same; I think some of them were small and others larger.
Q. About how large were the largest ones?
A. About this size (indicating about one and one-half inches).
Q. What did you do with those nails?
A. I took the nails upstairs, and as I thought the boxes were to be nailed up, as I had gotten covers for them, I put the covers on and drove the nails partly in, as I did not think they were to be closed tightly, because there was nothing more than rubbish in them.
Q. You stated that before you took the two boxes up to the armory in the headquarters building you partly filled them with rubbish. Did you place much excelsior in them or not?
A. Yes, sir, I was told to put enough in them.
Q. How much excelsior did you put in those boxes?
A. I filled them; I packed the excelsior in.
Q. Where were you accustomed to sleep while you were in charge of that armory?
73 A. Before my company went away I slept in the quarters, but after that, after the company went away, I was directed by the Commanding Officer to sleep in the headquarters building.
Q. On January eleventh how long had you been sleeping in the headquarters building?
A. I have no idea, but my company left in November the year previous—last year.
Q. When you left the headquarters building that afternoon, with permission of Lieutenant Harn, were those two boxes, that you mentioned, in the armory at that time?
A. Yes, sir, because after I had put the covers on them I did not leave the armory until I went to go home.
Q. You placed those two boxes in the armory that afternoon: did you see them at any subsequent time—at any place?
A. When the commanding officer went into that room the two boxes were not there, and he asked me if I would know them if I saw them, and I told him yes.

Q. My question is, Did you see these two boxes after you had put them in the armory that afternoon?
A. I saw them in the house of Lieut. Harn.
Q. When?
A. I think it was either Monday or Tuesday. I don't remember exactly.
Q. Had you learned of the disappearance of the safe of the Constabulary, containing funds, in the month of January of this year?
A. Yes, sir; I heard of it on Saturday morning.
Q. When you saw those two boxes in the house of Lieut. Harn was it after you had heard of the disappearance of the safe
74 of the Constabulary here in Catbalogan, or previous?
A. It was afterwards.

That is all.

MAY 8, 1907.

Direct examination continued:

Q. You stated here yesterday that you are in the habit of cleaning up the armory in the Constabulary building here in Catbalogan. I now ask you if you had ever seen coal-oil boxes in that armory before?
A. No, sir.
Q. Then those two coal-oil boxes, which you carried up into the armory on Friday, January eleventh of this year, were the only ones carried up there by you, were they?
A. Yes, sir.
Q. In what part of the armory did you leave those boxes—in the first, second or third rooms?
A. The first room.

That is all.

Cross-examination.

By Mr. SOUTHWORTH:

Q. What time did you leave the Constabulary building on the evening of January eleventh?
A. I cannot state exactly the hour, but it was after retreat.
Q. About how long after retreat?
A. As I left the building the troops had been dismissed, but not all had gone into their quarters. Some of them were going in as I passed by.
75 Q. At what hour do they have retreat?
A. I am not sure whether it was five-forty or five-fifty in the afternoon.
Q. Did you take those boxes up there before or after retreat?
A. Before.
Q. How long before?
A. I have no idea. I was working, and did not notice the time.
Q. Cannot you tell about how long?
A. I don't know whether it was four-thirty, five or five-twenty. It was something like that.

Q. You saw the boxes when you left there, did you not?
A. Yes, sir, they were there when I closed and locked the door.
Q. How many people were in the Constabulary building when you left there?
A. I saw Lieut. Dowdell there. I went out without looking around to see who was still there.
Q. But you knew there were some other people in the building, did you not?
A. I don't know whether there were any others there or not, because I did not look to see.
Q. Do you know Corporal Maslog?
A. Yes, sir.
Q. Was he not in the building when you left there?
A. I did not see him. I don't know whether he was there or not.
Q. Was Sergeant David in the building, or not?
A. I don't know whether he was there or not.

Q. Was there not an orderly in the building when you
76 left the building?

A. He was there.
Q. Well, you left him in the building, did you not?
A. Yes, sir.
Q. Well, you knew he was there, in addition to Lieut. Dowdell, did you not?
A. Yes, sir.
Q. Well then, you don't know who was in the building in addition to Lieut. Dowdell and the orderly when you left?
A. No, sir.
Q. There may have been other people in the building when you left, might there not?
A. I don't know; I am not going to say they were there, because I did not see them.
Q. How many boxes did you carry up there on that occasion?
A. Two.
Q. Did you not send goods packed in coal-oil boxes to the province, from that ordnance room, before?
A. I don't remember to have seen them.
Q. Did you not send cosmoline, and other kinds of oils, packed in boxes and sent out from the ordnance room, to the province before?
A. I was not the one who took the box up there. I think the box is still up there which contains cocoanut oil.
Q. Was that a coal-oil box?
A. Yes, sir.
Q. Did you see it after it was brought up there?
A. Yes, sir, I saw it at the time the cans were put into it. I was told to do so by Lieut. Dowdell.

Mr. SOUTHWORTH: I ask that what he said referring to
77 Lieut. Dowdell be stricken out, on the ground that it is not responsive.

COURT: Sustained.

Q. Where was this coal-oil box at the time the cans were put into it?

A. It was in the armory underneath the table which I used in cleaning firearms when Lieut. Burbank was still there. I don't know where the box came from.

Q. Was it in the same room in which you took the two coal-oil boxes to which you have testified, or not?

A. No, sir, it was in the second room. After I had filled the boxes I brought them outside to the stairs.

Q. Well, had you ever seen any other coal — boxes there at any time before?

A. No, sir, other than the ones I brought up.

Q. Were there any particular marks on those two coal-oil boxes, which you carried up, that day, by which you could identify them?

A. There were no marks on the boxes themselves, but I remember the covers I put on them and could recognize them by them.

Q. There was no way by which you could recognize them themselves?

A. Yes, sir, I would recognize them if they had no covers.

Q. Well, if they had no particular marks by which you could identify them, how would you recognize them?

A. I don't know, but if I saw them I would know them.

Q. But you cannot tell how you would recognize them, can you?

A. No, sir.

Q. Look at this peso now, and see if you could recognize it if you saw it again.

78 A. How could I recognize them, as I did not have anything to do with the making of it. But I worked on those boxes, and that is the reason I would know them.

Q. Did you have anything to do with the making of those boxes?

A. No, sir.

Q. Well, why would you not know the boxes, as well as this peso after examining it?

Mr. ADAMS: I object to the question, on the ground that it is confusing.

COURT: May answer.

A. I don't know whether I would know the boxes or not, if they were altered or changed in any way. But otherwise I would.

Q. Would you know this peso if it was not altered or changed in any way?

A. No, sir.

Q. Well, you would not know those boxes again if you saw them—if there were no marks on them that you recognized—would you?

A. I don't know whether I would not, but I think I would if they were not changed.

Q. Was there any kind of a mark on them that you would recognize?

A. Yes, sir.

Q. What was it?

A. The timber in those boxes were different from that used in the manufacture of coal oil boxes.

Q. Was it the same in both boxes?

A. The same kind of wood, but different-sized boards, and one of the boxes had some marks on it.

Q. Did I not ask you if either of those boxes had any mark by which you could identify it from another box, and you stated it had not?

79 A. I said a while ago that there was no mark there that I had placed there so I could identify them, but one reason why I would recognize them is that there was board not originally there, and not the same as the others.

Q. Which box was that on?

A. On the coal-oil box.

Q. Well, was those board which originally did not belong there on both boxes or on only one of them?

A. Only one.

Q. How did you recognize the other one?

A. I did not recognize the other box, and I don't know whether I would recognize it. I was in a hurry, and just put the cover on it and went away.

Q. Now, you say that you recognized those coal-oil boxes from other coal-oil boxes because they had boards of different sizes from other boxes, did you not?

A. I referred to only one of them.

Q. Did it have boards of different sizes from other coal-oil boxes?

A. The board which I spoke of as being different from other boxes must have been taken from a box which was not a coal-oil box and placed upon this coal-oil box.

Q. Did that board belong to the box?

A. The board which did belong to the box had black paint on it.

Q. How many coal-oil boxes did you see in Lieut. Harn's house?

A. I did not count them all, but I saw some outside in the kitchen, and I saw two on the kitchen porch.

Q. Did you make an examination of those other boxes?

A. No, sir, I just saw them there, but I did not pay any attention to them.

That is all.

80 CANUTO JAMIAS, produced and sworn as a witness in behalf of the prosecution, states that he is thirty-three years of age, a married man, by occupation a Sub-Inspector of Constabulary, a native of Ilocos Norte and a resident of Catbalogan.

Direct examination.

By Mr. ADAMS:

Q. What are your duties as Sub-Inspector in this province?

A. On the fifteenth or sixteenth of November, 1906, I was detailed by the Quartermaster General of the Constabulary as assistant paymaster of this province.

Q. As assistant paymaster of the Constabulary of Samar, did you have anything to do with the Constabulary commissary?
A. Yes, sir.
Q. Where were you on the eleventh of January of this year?
A. I was in the office of the Constabulary of this town.
Q. Is the Commissary and the Office of the Commissary in the same building as the other office here?
A. Yes, sir.
Q. Do you remember if you opened the commissary on the eleventh of January of this year?
A. Yes, sir, I did.
Q. In the morning or afternoon?
A. In the morning and afternoon also.
Q. Do you remember who entered the commissary in the afternoon of January eleventh?
A. I don't remember all the persons who entered there, as I was working with some soldiers. I was not the only one present.
81 Q. Do you know a Constabulary by the name of Ignacio Dilao?
A. Yes, sir.
Q. Do you remember whether he entered the Commissary on that day?
A. Yes, sir.
Q. In the morning or afternoon?
A. I think it was in the morning.
Q. Do you remember why he came there?
A. Yes, sir.
Q. What for?
A. Mr. Dowdell came down some hours before twelve o'clock to the commissary and asked me if I had any empty boxes, and behind he came Ignacio Dilao.

Mr. SOUTHWORTH: I wish to say that, not having presented any objection in this case, I still reserve to object in all cases where testimony refers to Lieut. Dowdell.

Q. Were the boxes which he wanted that afternoon taken from the commissary?

Mr. SOUTHWORTH: I object to the question.
Question withdrawn.

Q. Were the boxes that he wanted on that occasion taken from the commissary?
A. Yes, sir.
Q. How many boxes?
A. Two.
Q. Were those two boxes empty or were filled or did they contain anything?
82 A. They were empty.
Q. Who took them out of the commissary?
A. The soldier Ignacio Dilao.
Q. Besides those two boxes, were there any other boxes taken out on that occasion?

A. At that hour, no.

Q. When?

A. I don't exactly remember the hour, but it was between three and five o'clock of that same afternoon that Mr. Harn came down into the commissary and asked me for nine full boxes of coaloil.

Q. Did you give Mr. Harn those nine full coal-oil boxes?

A. Immediately, no.

Q. When did you?

A. About ten minutes after I ordered the soldiers who were working with me in the commissary to take outside nine full boxes of coal-oil.

Q. Do you know where those nine full boxes of coal-oil were taken?

A. I ordered them placed to the left of the door outside of the commissary, and left them there.

Q. Then you left those nine full boxes of coaloil at the foot of the stairs which led up into the headquarters building?

A. The coal-oil boxes were left at the commissary door, which is about two and one-half brazas from the stairs leading up into the headquarters building.

Q. Do you remember having seen those boxes the next day after you had them placed outside there?

83 A. I saw some of them.

Q. How many did you see?

A. I think there were six of them left there.

Q. At the time that you placed those nine coal-oil boxes outside had you been appointed to any special duty on that occasion?

A. No, sir.

Q. Were you on any special duty the following evening after you had placed those coal-oil boxes outside of the commissary?

A. I don't understand the question.

Q. I mean were you on any special duty the following evening after you had placed those nine boxes of coal oil outside of the commissary door which Lieut. Harn had asked you for?

A. Yes, sir.

Q. What duty was that?

A. That same night between ten and eleven o'clock when I was in my house I was called by two Constabulary officers, and they informed me I had been -elected officer of the day by the Commanding Officer.

Q. As officer of the day on the following evening, did you go to the headquarters building?

A. Yes, sir.

Q. What did you do there?

A. After I had been notified that I had been selected as officer of the day I went to the guardhouse, and as I was passing the headquarters building I saw there was a large light upstairs, and I went up to see what it was; and I went up and turned the light down, for fear there would be a fire or something of that kind; and I was up there about a minute when I left. After I had come down I

84 went and made a round of the guards posted, as it was the duty of the officer of the day to do.

Q. You mean to say that when you saw the light up in the headquarters building you went up and turned it down?

A. I turned it down some, yes, sir.

Q. Do you remember if there were any persons in the headquarter- building when you went up to turn the light down?

A. There was a person up there lying down: he was the orderly of that day.

Q. Who was that person, do you remember?

A. A soldier whose name I don't know; but he is called Bauay.

Q. Where was that light? In what part of the headquarters building was that light that you turned down?

A. It was on a table on the right side of the door when you go in.

Q. When you turned the light down did you notice anything missing in that office?

A. No, sir.

Q. You stated before that you think that Ignacio Dilao entered the commissary in the morning. Do you mean to say that you don't know whether it was morning or afternoon?

Mr. SOUTHWORTH: I object to the question, on the ground that it is leading.

COURT: May answer.

Q. That is what I wished to convey by that statement, that I don't know whether it was morning or afternoon.

That is all.

85 Cross-examination.

By Mr. SOUTHWORTH:

Q. Now, you stated that Lieut. Dowdell and this man Dilao came into your office to get those boxes, did you?

A. It is not an office, but it is a storeroom.

Q. And some time after that Mr. Harn had nine boxes of coal oil set outside?

A. Yes, sir.

Q. And you say that was about three o'clock in the afternoon?

A. Yes, sir.

Q. How long was it after Dilao got those boxes before Harn had the coal oil set out?

A. I cannot state, but I can state that the empty boxes were asked for before the nine boxes of coal oil were.

Q. Can you not tell about how long?

A. No, sir, because I was working, and so I did not notice the passing of time.

Q. But you are positive that the boxes were given to Dilao before the coal-oil cans were set out?

A. Yes, sir.

Q. Did you go to lunch that day?

A. Yes, sir.

Q. What time did you return to the office?

A. We are in the habit of leaving about twelve and returning about two.

Q. Do you know what time you returned that day?
A. Not exactly, no.

That is all.

86 JUAN BELGAR, produced and sworn as a witness in behalf of the prosecution, states that he is twenty-one years of age, a single man, by occupation a Constabulary soldier, a native of Albay and a resident of Catbalogan.

Direct examination.

By Mr. ADAMS:

Q. Eustaquio Bactac sworn as interpreter.

Q. How long have you been in Catbalogan?
A. Twenty-sixth of October.
Q. What year?
A. Year 1906.
Q. Where were you on the eleventh of January, 1907?
A. I was in the quarters building in this town.
Q. What was your occupation in the quarters that day?
A. Old guard fatigue.
Q. On that day were you ordered to do anything as old guard fatigue outside of the quarters?
A. Yes, sir.
Q. What service?
A. The sergeant of the guard directed us to take the pushcart to the headquarters building.
Q. In the morning or the afternoon?
A. After retreat in the afternoon.
Q. Who were your companions in taking that handcart around there?
A. Bonifacio Clar, Surigao Tejio and myself.
Q. From where did you get that hand-cart and where did you take it?
87 A. We got it from the guardhouse and took it to the headquarters building, but before arriving there we met Lieut. Harn, and he took us with him.
Q. Where did you meet Lieut. Harn?
A. In front of the governor's house.
Q. What do you mean to say when you say Lieut. Harn took you with him; the push cart also?
A. When we met Lieut. Harn he followed us, but when we arrived at the headquarters building he told us to leave the cart at the door, and took us upstairs.
Q. When you went for the hand cart had you had supper yet, or not?
A. No, sir, we did not.
Q. What did you do up in the headquarters building when Lieut. Harn took you up there?
A. When Lieut. Harn told us to come up there he was already up there, and he told us to go into the room which was at the head of

the steps and get two boxes and put them in the handcart, which we did. Those two boxes were in the senter room.

Q. After leaving the pushcart at the door of the headquarters building, and after you went upstairs, was the door of the room where you got the boxes open or closed?

A. It was open.

Q. How many of you went upstairs?

A. We were five with Lieutenant Harn, including him. I followed Lieut. Harn, and my three companions were behind me.

Q. How did you carry those two boxes?

A. We carried them.

Q. How?

88 A. Two soldiers carried one box.

Q. Who was helping you to carry one of the boxes?

Mr. SOUTHWORTH: I object to the question, on the ground that it assumes facts not proven.

COURT: Sustained.

Q. Did you carry one of those boxes?

Mr. SOUTHWORTH: I object to that question, on the ground that it is leading.

COURT: Sustained.

Q. Who carried those boxes?

A. The first box which was lifted up, was lifted up by myself and Clar.

Q. Where were those two boxes taken to?

A. We took them from the room to the hand cart.

Q. What did you do then?

A. After we had put the boxes in the push-cart, Lieut. Harn ordered us to get three boxes of oil which were down in the hall-way and put them in the cart, which we did.

Q. How did you place those five boxes in the cart?

A. The two boxes which we got upstairs were placed in the front of the cart, and two coal-oil boxes upon them, and the fifth box was placed on top of the others.

Q. Please repeat the answer.

A. We placed the two boxes in the cart which we had got from upstairs, and then Lieut. Harn ordered us to get three boxes of coal oil, and two boxes were placed upon the two boxes which we got from upstairs, and the third coal oil box was placed on top of the others.

Q. Then what did you do?

89 A. Lieut. Harn was standing near the cart, and after we had finished loading the boxes he told us that the two boxes which had been brought from upstairs should be taken to his house and the three boxes of coal oil should be taken to Major Murphy's quarters.

Q. What did you do then?

A. When he told us this we started out, and Lieut. Harn went ahead of us.

Q. Did you stop at the house of Major Murphy?

A. Yes, sir.

Q. What did you do thete?

A. When we arrived at Major Murphy's house the three coal-oil boxes were taken up into the major's house, and left there by some of the soldiers.

Q. Then you did not take those boxes to Major Murphy's house?

A. No, sir, because I was holding the hand-cart. Clar, Tejio and Surigao took the boxes upstairs.

Q. The boxes which were taken up into the major's house were the ones taken from upstairs in the headquarters building, or were they the ones which were taken from downstairs?

A. Those from downstairs in the headquarters building.

Q. What did you do after you left the three boxes in Major Murphy's house?

A. We then went on to Lieut. Harn's house. He was about two brazas ahead of us.

Q. What did you do with those two boxes which were taken to the house of Lieut. Harn?

A. When we arrived at Lieut. Harn's house the soldier Clar took one of the boxes and was hardly able to carry it, as it was
90 heavy, and two soldiers took the other box. Lieut. Harn became angry, as Clar was unable to carry the box, and he said if one cannot carry the box two can.

Q. What were you doing all the time?

A. I was holding the hand-cart.

Q. Did Lieut. Harn say anything to you when you arrived at his house with the push-cart?

A. As Lieut. Harn was going upstairs after we had unloaded the boxes he said we could return.

Q. Did you return to your quarters?

A. Yes, sir.

Q. When you returned to the quarters what did you do?

A. We had supper.

Q. When you left the quarters with the push-cart, had the other soldiers which remained there eaten yet or not?

A. No, sir, but they were about to eat.

Q. When you returned to the quarters had the soldiers eaten yet or not?

A. Yes, sir, they had.

Q. What time did you finish your supper in the quarters?

A. Six o'clock.

Q. Was it dark at the time you went and got the boxes in the headquarters building, or not?

A. It was getting dusk.

Q. At the time that you arrived at Lieut. Harn's house was it very dark yet, or not?

A. It was dark. There were lights in the house.

That is all.

91 Cross-examination.

By Mr. SOUTHWORTH:

Q. Is it not a fact that when you delivered those three cans *fo* coal oil to Major Murphy's house Lieut. Harn went back to the headquarters building?

A. No, sir, he did not return to the headquarters.

Q. Did he stay by the cart all the way to his own house?

A. Yes, sir.

Q. Was he in front or behind the caratela?

A. In front.

Q. How far in front?

A. I calculate about two brazas.

Q. At that time that you arrived at his house was he in front or behind?

A. When the cart stopped at Mr. Harn's house he was behind.

Q. Well, now, at what point on the road between Major Murphy's and Lieut. Harn's houses did he get behind the caratela?

A. He went ahead of us until we stopped, and then he came around behind.

Q. Did he stay there behind the cart until it was unloaded?

A. He staid behind the cart a few seconds and then went upstairs, telling us before that that as soon as we had unloaded the two boxes to return to the cuartel.

Q. The- he went upstairs before you unloaded the two boxes?

A. Yes, sir.

Q. You had not taken either box upstairs before he went, had you?

A. No, sir.

Q. Well, had you taken either of them off of the cart be-
92 fore he went upstairs?

A. Yes, sir.

Q. Well, how long had he been in the house before you went up there?

A. I suppose that at the time he arrived at the head of the stairs we started upstairs.

Q. When you went upstairs where was he?

A. I cannot say where he was—in what part of the house he was—because I remained below.

Q. Why did you say, then, that "we were going up the stairs"?

A. I did not state that I was going up, but my companions were going up.

Q. Did you not say that when Lieut. Harn reached the head of the stairs of his house we were just about going up the stairs?

A. I stated that I supposed that at about the time Lieutenant Harn arrived at the head of the stairs the soldiers were starting with the boxes.

Q. Did you see anybody else at the house at that time besides Lieut. Dowdell, who you testified was there?

A. No, sir, no other. I saw no others there. He was in the window when I saw him, and I was down below.

That is all.

93 BONIFACIO CLAR, produced and sworn as a witness in behalf of the prosecution, states that he is twenty-two years of age, a single man, by occupation a Constabulary soldier, a native of Albay and stationed in Catbalogan, Samar.

Direct examination.

By Mr. ADAMS:

Q. How long have you been in the Constabulary?
A. Since 1905.
Q. Where were you on the 11th of January, 1907?
A. I was in the Constabulary quarters here in Catbalogan.
Q. What duty were you on on that day?
A. Old guard fatigue.
Q. As old guard fatigue, did you do any work that day?
A. Yes, sir.
Q. In the morning or afternoon?
A. We were working from the morning until the afternoon.
Q. What were you doing in the afternoon of that day?
A. That afternoon Lieut. Harn came and asked for some old guard fatigue, and ordered us to take a handcart to the headquarters building.
Q. Were you one of the old guard fatigue which took that handcart to the headquarters building?
A. Yes, sir.
Q. Where did you find that push-cart?
A. Close to the guardhouse, near the quarters.
Q. Was it near the quarters?
A. No, sir, it was in front of the guardhouse.
Q. Do you refer to the guardhouse at the quarters?
94 A. Yes, sir.
Q. What did you do with that cart?
A. When we arrived at the headquarters building with the cart Lieut. Harn ordered us to go upstairs and into the second room of the armory, and get two boxes which were there and put them in the cart.
Q. Did you load those boxes which were in the armory onto the cart?
A. Yes, sir, and Belgar and I carried one of the boxes and the two other soldiers carried the other one.
Q. When you left the headquarters with the cart had you eaten yet, or not?
A. Not yet.
Q. About what time do you generally have supper at the quarters?
A. That day we ate supper after we returned, after we had carried out the orders of Lieut. Harn, about seven o'clock in the evening.
Q. After you had loaded the boxes onto the cart what did you do?
A. After we had brought the two boxes from the armory and put them on the cart we got three other boxes from downstairs and put them on the cart. We were then told that those three boxes which we had loaded last were to be taken to Major Murphy.

Mr. SOUTHWORTH: I move that the answer be stricken out, on the ground that it is not responsive.

Mr. ADAMS: No objection.

95 Q. Did you put the three boxes, which you got downstairs, on the cart?

A. Yes, sir, we put the other boxes on the two which we got from upstairs, and the other on top of them.

Q. Did you yourself load any of those boxes which were taken from underneath the headquarters building?

A. Yes, sir, one.

Q. Did you notice the difference between the boxes which you helped to carry downstairs and the one which you helped to load on the cart, which you got underneath the headquarters building?

A. The one which we got upstairs was heavier than the one we got below.

Q. What did you do after you loaded those boxes on the cart taken from the building?

A. After we had loaded the five boxes onto the cart, Lieut. Harn told us that the three boxes that we had taken from downstairs should be taken to Major Murphy's house. After we got to Major Murphy's house we took the other two to Lieut. Harn's house.

Q. Did you take those three boxes to Major Murphy's house?

A. Yes, sir, and put them in a small room.

Q. Did you carry any of those boxes up into Major Murphy's house?

A. Yes, sir; I went up also.

Q. What were the boxes that you took to Major Murphy's house,—the ones you got in the armory or the ones that you got downstairs?

A. Those which we got downstairs were the ones we took to Major Murphy's house.

96 Q. Did it take two men to carry one box, or only one?

A. Those three boxes were taken up into Major Murphy's house, each one carried by one man.

Q. What did you do after you left those boxes at Major Murphy's house?

A. After leaving the three boxes in Major Murphy's quarters we took the other boxes to Lieut. Harn's quarters. Two of us were going to take one of the boxes out of the cart, and take it upstairs, but it was difficult to do so, and Lieut. Dowdell was standing in the window upstairs, and he became angry with us because we could not lift the box, and to avoid being called down by Lieut. Dowdell I exerted my strength and took the box upstairs, and was helped to let it down by a Constabular- Lieutenant who was there.

Q. What did Lieut. Dowdell say to you from the window?

Mr. SOUTHWORTH: I object to the question, on the ground that it is incompetent, because Harn's presence has not been shown.

COURT: Sustained.

Q. Then you alone unloaded one of those boxes which arrived at the house of Lieut. Harn?

A. I carried the box into Lieut. Harn's house.

Q. Was Lieut. Harn present when Lieut. Dodwell became angry because you could not lift the box?

Mr. SOUTHWORTH: I object to the question.

COURT: Sustained.

Q. Did you note any difference between the box which you carried up into the house of Lieut. Harn and the one you carried into the house of Major Murphy?

97 A. I noticed that the box we carried in Lieutenant Harn's house was heavier, because when I put it on my shoulder I could not walk well.

Q. After you had arrived upstairs in the house of Mr. Harn what did you do?

A. After we had carried the two boxes upstairs we returned to our quarters.

Q. And when you arrived at the quarters as you have stated, you had supper,—is that so?

A. Yes, sir, that is when we had our supper.

Q. The other soldiers, who were at the quarters, had they had their suppers yet or not?

A. They had terminated.

That is all.

No cross-examination.

Mr. ADAMS: Two other witnesses—the two soldiers who accompanied these men and helped to take the boxes—are here, but I do not care to present them unless the court demand.

COURT: Not necessary.

98 JULIAN CASIMIRA, produced and sworn as a witness in behalf of the prosecution, states that he is seventeen years of age, a single man, by occupation a farmer, a native (of) Gandara, and a resident of the municipality of Catbalogan, Samar.

Direct examination.

By Mr. ADAMS:

Q. Where were you in the month of January of this year?

A. I was in the house of Mr. Harn. I was his muchacho at that time.

Q. How long had you been his muchacho?

A. About eight months.

Q. Had you heard of the disappearance of the constabulary safe in this town?

A. I heard of it when there was a notice published.

Q. Were you in Lieut. Harn's house when you heard that *that* notice published?

A. Yes, sir.

Q. When you were in Lieut. Harn's house did you see any boxes brought in there?

A. I did.

Q. How many boxes did you see brought in there, and by whom were they brought?

A. Two coal oil boxes brought by some soldiers. One box was brought in by two soldiers.

Q. Question repeated.

A. First, two boxes were brought in by two soldiers; after that, two boxes were brought in by persons paid by the paymaster.

Q. Were the two boxes brought in by the soldiers brought
99 be—sent by the paymaster as you stated?

A. They were brought first.

Q. Where were you when the soldiers brought the boxes to your master's house?

A. Lighting the lights; lighting the lamps.

Q. In which room?

A. In the sala parlor.

Q. Did you see the boxes when they were brought up by the soldiers?

A. Yes, sir.

Q. Where were they placed?

A. Behind the door.

Q. Inside or outside of the door?

A. Inside of the door.

Q. The door at the head of the stairway or another one?

A. Behind the door of the stairway.

Q. In what manner were those two boxes placed there?

A. They were placed there by the help of Lieut. MacIlvaine, one on top of the other.

Q. Do you know who ordered them put there?

A. I don't know; they were just brought there and placed there.

Q. Where was your master, Mr. Harn, when those boxes were brought there by the soldiers?

A. He came up at the same time.

Q. Who came up first—Lieutenant Harn or the soldiers with the boxes?

A. Lieut. Harn.

Q. When did the two boxes sent by the paymaster arrive there?

A. After we had supper.

100 Q. Who were your companions eating supper at the time those boxes arrived?

A. Two small muchachos.

Q. Whose?

A. Lieut. Harn's muchachos.

Q. Where were you eating?

A. In the kitchen.

Q. Where were the two boxes put that were brought to the house while yourself and the two muchachos were eating in the kitchen?

A. In the kitchen.

Q. How many boxes were there?

A. Two.

Q. The next day, how did you find the two boxes which had been brought there by the soldiers—in what condition?

A. They were out on the kitchen porch, without anything in them?

Q. Did you see those two boxes, which were brought there by the soldiers, out on the porch of your master's house, the next day?

A. Yes, sir, the next day.

Q. When you saw those two boxes on the kitchen porch the next day were the boxes which had been placed behind the door the preceding day still there?

A. No, sir, they were not.

Q. Were the two boxes, which you stated had been brought there by order of the paymaster, still where they had been placed at the time you saw the two boxes on the porch?

A. Yes, sir, they were.

Q. Did the boxes which you found out on the porch the next day have anything in them?

101 Mr. SOUTHWORTH: I object to the question, on the ground that it is already answered.

COURT: May answer.

A. There was something in them. They had shavings in them only.

Q. In both boxes did you find this rubbish?

A. One of them had. They had shavings and a sack used for scrubbing the floor, and a piece of oilcloth.

Q. And the other one?

A. The other box had some shavings in it, and also four or five small baskets in it.

Q. What was contained (in) the boxes sent there to your master's house by the paymaster?

A. Coal oil.

Q. How many cans did they contain?

A. Four cans in the two boxes.

Q. Did you have any cans of coal oil in the house before those two boxes were brought there?

A. Yes, sir, about a half can-ful.

That is all.

Cross-examination.

By Mr. SOUTHWORTH:

Q. How long after those soldiers brought those boxes there before supper was eaten?

A. I don't know, as I don't know much about them.

Q. About how long?

A. I think about half an hour from the time the boxes were brought there until myself and the two other muchachos eat.

Q. Who ate supper there that night?

102 A. The muchachos only.

Q. Did not Lieut. MacIlvaine and Lieut. Harn eat supper there that night?

A. No, sir.

Q. How long did they stay there after those boxes were brought there by the soldiers?

A. I don't know how long, or whether they left the house because I was sent out on an errand by Lieut. Harn that night.

Q. Well, how long after you had your supper before Lieut. Harn sent you out?

A. I was sent out immediately by Lieut. Harn.

Q. Where did Lieut. Harn send you?

A. He sent me for a woman.

Q. Did he tell you at that time who the woman was for?

Mr. ADAMS: I object to the question, on the ground that it is not proper cross-examination and is immaterial.

COURT: Sustained.

Q. How long was it before you returned to the house?

A. I had no watch, but I judge that it would be about nine o'clock when I returned with the woman.

Q. If you left the house immediately after eating your supper and did not return until nine o'clock how do you know that Mr. Harn and Mr. McIlvaine did not eat supper there?

A. Because they did not eat at that house, but were boarding at Mr. Scott's house.

Q. Don't you know that Mr. Scott sent their supper over there and they ate supper there at Mr. Harn's house?

A. No, sir, because I was not there. I was out after a woman.

103 Q. Now, did not Mr. Scott sometimes send supper over there to Mr. Harn's house, before that?

Mr. ADAMS: It is admitted that supper was sent over and that Mr. Harn and MacIlvaine had supper during the absence of this boy.

Mr. SOUTHWORTH: This is for the purpose of cross-examination.

A. Sometimes it was sent over there, and other times they would go to Mr. Scott's house.

Q. Were those boxes put in a room or set in the hall by the soldiers when they brought them in?

A. Behind the door, which was open.

Q. Was it in the hall or inside of the room?

A. The door was at the head of the stairway and opens swinging into the room, and the boxes were placed behind the door.

Q. Were the boxes put inside of the room or outside in the hall?

A. Inside of the room.

Q. You say that you returned to that house about nine o'clock that night?

A. Yes, sir, I calculated it to be that hour.

Q. Did you sleep there that night?

A. No, sir, I was sent out again for another woman.

Q. What time did you return to that house that night?

A. It was very late at night; I don't know exactly what time it was.

Q. Well, did you sleep there that night?

A. I laid down that night about four o'clock in the morning. I was kept running back and forth, and the roosters were beginning to crow in the morning.

That is all.

104 EMIGDIO PAGANOS, produced and sworn as a witness in behalf of the prosecution, states that he is sixteen years of age, a single boy, by occupation a farmer, a native of Nueva Ecija and a resident of Catbalogan, Samar.

Direct examination.

By Mr. ADAMS:

Q. Where were you during the month of January of this year?
A. I was in Catbalogan.
Q. Did you know of the disappearance of the Constabulary safe here in Catbalogan?
A. Yes, sir.
Q. Did you ever carry any box to the house of Mr. Harn?
A. Yes, sir, I took some coal oil to Mr. Harn's house from the house of Lieut. Dowdell.
Q. How many boxes did you take there?
A. Two.
Q. At the time you took the boxes of coal oil to Mr. Harn's house had you heard of the disappearance of the Constabulary safe yet, or not?
A. No, sir, I had not. I took the coal oil to Lieut. Harn's house like this evening, and tomorrow evening the public notice was given that the Constabulary safe had disappeared.

That is all.

No cross-examination.

105 LUCIANO CHAVES, produced and sworn as a witness in behalf of the prosecution, states that he is twenty-seven years of age, a single man, by occupation a Constabulary soldier, a native of Albay province and a resident of the town of Catbalogan, Samar.

Direct examination.

By Mr. ADAMS:

Q. Were you a member of the Philippine Constabulary in Catbalogan last January?
A. Yes, sir.
Q. Do you remember the occasion last January of the disappearance of some funds from the Constabulary—from the Supply Officer's office of the Constabulary?
A. Yes, sir.
Q. Were you on duty the night before you heard of the disappearance of those funds?
A. I was on guard.

Q. Where?
A. In the headquarters.
Q. What hour did you go on guard?
A. From seven to nine o'clock.
Q. Did you see Mr. Harn enter the building during that time that you were on guard?

Mr. SOUTHWORTH: I object to the question, on the ground that it is leading.
COURT: Sustained.

Q. Did you see Mr. Harn during that time?
A. Yes, sir.
Q. Where did you see him?
106 A. When I was on guard between seven and nine o'clock Mr. Harn entered the headquarters building.
Q. What, if anything, did he say to you?
A. Shortly after Mr. Harn entered the headquarters building the orderly came out and a few moments after Mr. Harn came down and told me if the orderly came back to tell him to take his, Mr. Harn's, bed to the jail.
Q. Request answer repeated.
A. After Mr. Harn had gone up into the headquarters building the orderly came down and went up the *th*reet. Shortly after, Mr. Harn came out and told me, when the orderly returned to tell him to take his, Mr. Harn's, bed to the jail. I came to a port when Mr. Harn spoke to me.
Q. What was the name of the orderly?
A. Maximo Baui.
Q. Did Maximo Baui speak to you when he came down?
A. No, sir.
Q. Do you know Gregorio Ponceras?
A. Yes, sir.
Q. Did you see him while you were on guard that night from seven to nine?
A. I did.
Q. Where did you see him?
A. He went up into the headquarters building.
Q. Name all the people who went up into the headquarters building while you were on guard from seven to nine?
A. During my tour of guard the only persons who went up there were Lieut. Dowdell and another lieutenant, commanding the second company.
Q. Who else?
107 A. Lieut. Harn, Maximo Baui, Ponceras. I don't remember his first name.
Q. Was it Gregorio Ponceras?
A. Yes, sir.
Q. Did Lieut. Harn enter the building, while you were on guard, again?
A. Yes, sir.
Q. Did Maximo Baui go up into the building again while you were on guard?

A. Yes, sir.
Q. Who entered first of those various persons that you have named?
A. The first who entered was the orderly.
Q. What is his name?
A. Maximo Baui.
Q. The second?
A. Gregorio Ponceras.
Q. Who entered next, if you know? If you are not sure, say so.

Mr. SOUTHWORTH: I object to him telling him what he is to answer.

A. I think Lieut. Dowdell.
Q. Who was the last man to enter?
A. The Lieutenant of the second company.
Q. What is his name?
A. I don't know.
Q. Were you the first man who went on guard that night?
A. I was not. It was a man by the name of Fumar. He was number one.

That is all.

108 Cross-examination.

By Mr. SOUTHWORTH:

Q. Now, who was the fourth man to enter that building that night between seven and nine?
A. The next was Lieut. Harn and the fourth was the Commanding Officer of the fourth company.
Q. You stated that Maximo Baui was the first man, did you not?
A. Yes, sir.
Q. Then you said that Gregorio Ponceras was the second man, did you not?
A. Yes, sir.
Q. Then you said that Lieut. Dowdell was the third man, did you not?
A. Yes, sir.
Q. Was this Lieut. Byers that you referred to as the Lieutenant of the second company?
A. Yes, sir.
Q. He is the American lieutenant of the second company?
A. Yes, sir.
Q. At what time did he enter this building with reference to the numbers you have given us—was he fourth, fifth or sixth who entered the building?
A. The fourth.
Q. Well, who was the fifth?
A. Lieut. Harn.
Q. Who was sixth?
A. No one else while I was on guard, up to nine o'clock.
Q. How long was Maximo Baui up in that building?

A. He was orderly for twenty-four hours.

109 Q. How long was he up in that building that night?

A. I cannot state.

Q. Well, did you not see him when he came down?

A. I saw him when he came down.

Q. Well, how long was he up there before he came down?

A. I cannot state how many hours he was upstairs.

Q. Did he come down before Lieut. Byers came down?

A. The orderly came in; Lieut. Dowdell came down; then Lieut. Byers, and with him Maximo Baui, who was carrying a basket.

Q. Now, how long after Baui came down before Lieut. Harn came down.

A. I cannot state how long—how many hours.

Q. Did Maximo Baui leave the building when he came down?

A. He came down in Company with Lieut. Dowdell.

Q. Well, did anybody come down in company with Lieut. Byers?

A. Lieut. Byers, Lieut. Dowdell and Maximo Baui came down at the same time.

Q. Did they all leave there together?

A. Yes, sir, with the basket.

Q. Where were they when you saw them for the last time?

A. I cannot state where they were, because they went away.

Q. In what direction did they leave the building?

A. When they came down from the building they turned to the right and went up the street (south).

Q. Did you keep your eyes on them as they walked up the street?

A. While they were still near. It was dark that night, and I saw them leave, but I could not see them after that.

Q. The last time you saw all three of them they were walk-

110 ing south down the street, were they?

A. Yes, sir.

Q. Now, about how far had they gone when Lieut. Harn came down out of the building?

A. I cannot state how many hours.

Q. Was it an hour after they left before Lieut. Harn came down?

A. I cannot say.

Q. Was it two hours?

A. I cannot state.

Q. Was it three hours?

A. I cannot state.

Q. Did you not testify in the investigation in this case about two days after this offense was alleged to have been committed?

A. Yes, sir.

Q. Now, did you not testify at that time that Lieut. Harn was in the building only one minute?

A. No, sir.

Q. Well, what did you say in reference to the time he was there?

Mr. ADAMS: I object to the question, on the ground that it is not proper cross-examination.

COURT: May answer.

Question withdrawn.

Q. Who came down first out of the building of those men that you say were up there?

A. Lieut. Byers, Lieut. Dowdell and the orderly.

Q. The Lieut. Harn came down?

A. I was on guard; Lieut. Dowdell was the first who came; Lieut. Byers and the orderly, and then the orderly came back and
111 went upstairs, and Lieut. Harn went upstairs after him.

Q. Then Lieut. Harn came down after the orderly came down the second time?

A. The orderly was first.

Q. Then Lieut. Harn came down?

A. The Lieut. Harn told me to tell the orderly to take his bed to the jail.

Q. Well, he came down out of the building before he told you to tell the orderly about the bed, did he not?

A. Yes, sir.

Q. Now, then, Lieut. Dowdell, Lieut. Byers and the orderly came out of the building, and then Lieut. Harn came—is that not a fact?

A. Lieut. Dowdell and Lieut. Byers and the orderly came down and then the orderly came back.

Q. I want to know if anybody else came out of that building before Harn, except Dowdell, Byers and the orderly.

A. No, sir.

Q. And you stayed there until nine o'clock, did you?

A. Yes, sir, and nobody else came down out of that building.

Q. Nobody else came down from that building after that?

A. No, sir.

Q. Now, you stated that you saw Gregorio Ponceras go up into the building. When did he come down?

A. When he came down I was not on guard, but I was there when he went up.

Q. Then he was up in that building all the time that Lieut. Harn was there, was he not?

A. Yes, sir.

That is all.

112 Redirect examination.

By Mr. ADAMS:

Q. How do you know that he was up there all the time that Harn was up there?

Mr. SOUTHWORTH: I object to his cross-examining the witness.

COURT: May answer.

A. I knew when Gregorio Ponceras went up there.

Q. You knew what?

A. That.

Q. Do you mean to say that you knew that Lieut. Harn was upstairs when Gregorio Ponceras went up?

Mr. SOUTHWORTH: I object to the question, on the ground that it is misleading.

COURT: May answer.

A. Lieut. Harn was alone there.

Q. Do you mean to say that Lieut. Harn was there when Gregorio Ponceras went in?

Mr. SOUTHWORTH: I object to the question, on the ground that it is leading.

COURT: May answer.

A. Yes, sir, he was in there.

Recross-examination.

By Mr. SOUTHWORTH:

Q. Who went up into that building first, that night?
A. The orderly.
Q. Maximo Baui?
A. Yes, sir.
Q. Who was the second man who went up?
113 A. Gregorio Ponceras.
Q. Who was the third man to go up?
A. Lieut. Dowdell.
Q. Who was the next to go up?
A. Lieut. Byers.
Q. Who was next?
A. The last one to go up was Lieut. Harn, and Lieut. Dowdell and Lieut. Byers were no longer there.
Q. Lieut. Byers and Lieut. Dowdell went up into the building and left before Lieut. Harn went up?
A. Yes, sir.
Q. The- the orderly came down out of the building and after a few seconds Harn came down behind him, did he not?
A. Yes, sir.
Q. Now, you did not see Gregorio Ponceras go out of that building at all while you were there, did you?
A. No, sir.

That is all.

114 MAXIMO BAUL, produced and sworn as a witness in behalf of the prosecution, states that he is twenty-six years of age, a single man, by occupation a Constabulary soldier, a native of Isabel(a) and a resident of Catbalogan.

Direct examination.

By Mr. ADAMS:

Q. Were you here in the month of January last?
A. Yes, sir.
Q. What were your duties?
A. I was orderly.
Q. Where were you accustomed to sleep?
A. In the headquarters building.

Q. Do you remember the night before it was reported that the Constabulary funds had been stolen?
A. Yes, sir.
Q. What were you doing in the early part of the evening?
A. I was working in the armory that afternoon, and I went upstairs to clean up the offices and then laid down.
Q. By whom were you awakened?
A. Lieut. Dowdell.
Q. What happened then?
A. Lieut. Dowdell was with the Lieut. of San José de Buan. I carried a basket, and they went to the commanding officer's quarters.
Q. What did you do next?
A. I went to the headquarters building and then laid down again.
Q. Who awakened you?
A. Lieut. Harn.
115 Q. What did he say to you?
A. He told me to go and get a bed at his house and take it to the jail.
Q. What did you do?
A. I went and got his bed and took it to the jail and fixed it there, and returned to the headquarters building.
Q. Who was in the headquarters when you left?
A. Lieut. Harn.
Q. Who else?
A. No other.
Q. Who was there when you returned?
A. When I returned I found Gregorio Ponceras.
Q. Who else was up there?
A. No other person.
Q. How long were you gone?
A. I cannot state exactly, but about half an hour.

No cross-examination.

116 GREGORIO PONCERAS, produced and sworn as a witness in behalf of the prosecution, states that he — twenty-three years of age, a single man, by occupation a Constabulary soldier, a native of Oras, and a resident of Catbalogan, Samar.

Direct examination.

By Mr. ADAMS:

Q. Were you a member of the Constabulary and stationed in Catbalogan in January last?
A. Yes, sir.
Q. Do you remember the occasion of the disappearance of the Constabulary funds in the month of January?
A. Yes, sir.
Q. Where was your station at night at that time? What was your post at night?
A. That night—Friday night—I was ordered by Lieut. Dowdell

to go to his quarters and get his poncho, which I did, and then I returned to the headquarters building, where I had my bed, and laid down.

Q. Did you receive any orders after you returned?

A. Yes, sir, I turned the poncho over to Lieut. Dowdell; then I went upstairs and closed the offices of the headquarters building and laid down; and then Lieut. Harn came and told me to go to the Commanding Officer's quarters with a note, which he wrote on the table, and give it to him.

Q. About what time was that?

A. I don't know.

Q. Then what did you do?

A. The Commanding Officer was not in his house, and I
117 went out looking for him in the street but was unable to find him; so I returned to his house, thinking he might have returned. As I was going up I met Lieut. Adams and a Lieut. from San José and I was told by them that the Commanding Officer was not there, and that I had better return and turn the note over to the Commanding Officer's muchacho to be delivered when he returned, and I did so and left the house.

Q. Then what did you do?

A. I passed by the headquarters building and intended to go upstairs, but I was hungry, and went on to my washwoman and got something to eat, and it was about eight-thirty when I returned to the headquarters building.

Q. Who was there when you got back?

A. The guard only.

Q. Who was there when you left?

A. Lieut. Harn.

Q. How long were you gone?

A. I don't know how long, but I think it was something about eight-thirty when I returned.

Q. How do you know that it was something about eight-thirty?

A. Because I was in the headquarters building, after I returned, when the trumpet was blown for nine o'clock.

Q. How long before nine o'clock?

A. I cannot state.

Q. As near as you can.

A. I don't know how long.

Q. You put it at half past eight because you hear the trumpet a little while after, do you?

A. Yes, sir.

118 Q. Who returned first,—you or Maximo Baui?

A. I did.

Q. Who remained upstairs there during the night?

A. Myself and the orderly.

Q. The orderly Maximo Baui?

A. Yes, sir.

Q. What did you do there?

A. We slept there.

Q. Were you accustomed to sleep there?
A. Yes, sir.

That is all.

No cross-examination.

119 MAY 9, 1907.

CHARLES H. MACILVAINE, produced and sworn as a witness in behalf of the prosecution, states that he is twenty-seven years of age, a single man, by occupation an ex-Constabulary Officer, a native of the State of New York and a resident of Samar.

Mr. KAPUNAN: I, as attorney for Mr. MacIlvaine, object to his being used as a witness in this case while his own case is not terminated.

COURT: Objection overruled.

Mr. KAPUNAN: Exception.

Direct examination.

By Mr. ADAMS:

Q. How long have you been a Constabulary Officer?
A. Since June first, 1902.
Q. Where has your service been?
A. My service has been in Rizal province, Bulacan province, Cavite province, United States, Marinduque province and Samar.
Q. How long have you been in the province of Samar?
A. Since November twenty-ninth, 1904.
Q. Where have you been stationed?
A. In December and January and February I was stationed in Catarman, Samar. From that time up to the present at Camp MacCrea at Lope de Vega.
Q. Where is it situated?
A. About the middle, between the north coast and the west coast of the northern peninsula of Samar, thirty miles from coast,
120 in the interior.
Q. Are you acquainted with the defendant, Mr. Harn?
A. Yes, sir.
Q. How long have you known him?
A. I first met Mr. Harn, I think, in 1903, in the summer of 1903.
Q. Where were you during the week prior to January eleventh, 1907?
A. I arrived in Catbalogan on January fifth, 1907, and remained here until January eleventh, 1907.
Q. Where were you stationed at that time?
A. Camp MacCrea.
Q. How did you happen to be here?
A. It was necessary for me to come here to Catbalogan to get some data to straighten out my accounts. I wired the Senior Inspector for authority to come to Catbalogan for that purpose, giving the reasons in the telegram, and received an answer authorizing me

to come here to Catbalogan from the Acting Senior Inspector, Mr. Dowdell.

Q. What accounts were they?

A. Company mess accounts.

Q. Why was it necessary for you to come to Catbalogan to straighten out those accounts?

A. Because it was necessary for me to strike a balance and render it with the accounts, and there was also an order issued three months before, that it was necessary to insert the period, which I had not received for two months, and when Mr. Dowdell came up to Lope de Vega he brought with him my mail for three months,

121 and among these papers was this order which made it necessary before I could draw funds for my company, to straighten this out, and there was a difference between Mr. Dowdell's accounts and my accounts which could not be regulated unless he had access to my accounts and I had access to his, so we could compare them and find the difference.

Q. When did you arrive.

A. January fifth, Saturday.

Q. How did you spend the time in Catbalogan?

A. The day I arrived I spent with Lieut. Harn hunting on the Island of Darahoy.

Q. Where is it?

A. Just opposite Catbalogan,—the small island in front of Catbalogan. The next day I went hunting again with Lieut. Harn.

Q. On Monday, what did you do?

A. I went down to the office and tried to work on my accounts, Tuesday and Wednesday the same, and Thursday and Friday I was engaged in taking an examination before Major Murphy.

Q. Where did you put up while in Catbalogan?

A. With Lieut. Harn, at his invitation.

Q. How long since you had been in Catbalogan prior to that time?

A. I was in Catbalogan some time in September. I don't remember the date, but if I had access to my diary I could get the date.

Q. What were your relations to Mr. Harn, speaking as to how you passed the time in the house during the days that you have mentioned, especially Saturday and Sunday while here?

A. Very friendly.

122 Q. Be specific: what was there in the way you refer to what you consider a good time?

A. We had a good time drinking considerable and playing cards most of the time at his house and at other times at the various canteens in the town.

COURT: Have you any objection to testifying in this case.

A. No, sir.

Q. Be a little more specific as to the quantity of the drinking.

A. Well, we drank, what was to me, a large quantity of beer—some three or four dozen during a night or evening.

Q. Did you drink any during the day?

A. Yes, sir, we drank all the time; day and night.

Q. Was there any drinking *of* Friday?
A. Yes, sir.
Q. Thursday?
A. Yes, sir.
Q. What effect, so far as you can describe it, did it have upon Mr. Harn as well as yourself?
A. Well, it made us hilarious. I did not notice that Mr. Harn was intoxicated at any time, but it made us hilarious.
Q. As to your being in your usual state of mind respecting your conduct, discretion and judgment, how was Mr. Harn and how were you?
A. Well, I think that had we not been drinking we would not have done the things we did, the things that did happen. I am sure I would not have, and I know that the drinking dulled our sense of propriety.

123 Q. Going to Thursday night, was there anything particular occurred that night that you saw at the house of Lieut. Harn, relating to the funds of the Constabulary in the custody of Mr. Dowdell?
A. Yes, sir.
Q. What occurred?
A. Mr. Dowdell brought to the house a newspaper,——

Mr. SOUTHWORTH: I object to the statement of what Mr. Dowdell did.
COURT: Leave out what Dowdell done.
Mr. SOUTHWORTH: I wish to note our objection. The defendant objects to any testimony including any acts or statements of Mr. Dowdell, on the ground that Mr. Dowdell is not on trial; second, on the ground that no conspiracy has been shown to exist between Harn and Dowdell, in order to make such testimony competent.

Q. Now state what occurred Thursday evening in connection with the funds of the Constabulary in the custody of Mr. Dowdell.
A. Mr. Dowdell arrived at the house some time during the evening with a newspaper bundle of bills.
Q. Who were present?
A. Mr. Harn and myself.
Q. Go on.
A. We all had been drinking a great deal, and in a joking way it was mentioned that we go down and rake the silver money, too. Dowdell said that he would put the silver out, and that Harn and I would take it away. This was all said in a joking way, and the next morning Dowdell took the money back.
Q. Passing to Friday,—what occurred? How did you spend the day?

124 A. I went to the office the next day and completed my examination and turned the papers in to Major Murphy. He then ordered me to take the boat, which would leave for Calbayog that afternoon. While I was sitting at Major Murphy's desk receiving these orders a Mr. Jamias, who it seems had been sent to ascertain about the boat and when it would leave, reported that it was to

leave that afternoon at two o'clock. I took it for granted that it would leave that afternoon. Immediately after leaving there I went with Mr. Harn to Leocadia's canteen, and we had a few bottles of beer; then Mr. Harn and I returned to Mr. Harn's house.

Q. How many bottles of beer did you drink there that morning?

A. Probably three or four apiece.

Q. Proceed.

A. Arriving at Mr. Harn's house, I found the boat had left at ten-thirty, instead of in the afternoon, and therefore I missed the boat, and in the afternoon I did not feel well, and I remained in Mr. Harn's house all the afternoon.

Q. Did you drink any that afternoon?

A. I did not drink any that afternoon, until in the evening. I was sitting in the window at about five-thirty when I noticed Sergeant Robinson coming down the street, and I invited him in and we had a bottle of beer. Then Mr. Carrigan came in and we had a bottle of beer. We had been sitting there about ten minutes when Mr. Dowdell came in, and he had a bottle of beer about that time.

Q. Who left, if anyone, first, of you four gentlemen?

A. Mr. Robinson and Mr. Carrigan left about the time Mr. Harn arrived.

125 Q. In whose company did Mr. Harn arrive?

A. He arrived simultaneously with a push-cart and several soldiers.

Q. How do you know?

A. I saw him from the window.

Q. What occurred immediately thereafter?

A. Why, the two cases—coal oil cases—on the push-cart were brought into the house by the soldiers and deposited in the sala, and Mr. Dowdell left there a few moments after that, or just at that time.

Q. Was there any conversation in the presence of Mr. Harn at that time between any of you three?

A. Yes, sir.

Q. What?

A. Immediately after Mr. Dowdell left, Mr. Harn wanted me to go into the hall and move the cases, and when these cases were opened several sacks of silver money was found to be contained therein, and he asked me to help him put the sacks in his trunk, which I did, and then we entered Mr. Harn's bedroom and on the bed was a sack canvas—which contained paper bills. That was also put in Mr. Harn's trunk.

Q. Do you know how that sack containing the paper bills on the bed reached that place?

A. Mr. Harn informed me that Mr. Dowdell had brought it when he came in.

Q. Did you see it arrive?

A. No, sir.

Q. Were there any coal oil cans in the boxes?

A. No, sir, the boxes were about half full of excelsior, and the sack of money was all it contained.

126 Q. Did you know of the arrival of any other boxes there that evening?

A. No, sir.

Q. What occurred after the events you have described?

A. Why, Mr. Harn told me that Mr. Dowdell had taken the money out, but that the safe was still in the office, which must be disposed of in order to eliminate any evidence as to who had taken the money, and proposed that I would go down with Mr. Dowdell that night, and he would go to the office, and we should go behind the building, where there was a barota ready, and take the safe out and sink it.

Q. How did you receive this proposition?

A. I did not like it.

Q. What did you say or do?

A. I told Mr. Harn he had better take the money back, and he said he could not get it back; that it was very easy to get it out but not to get it back, and the thing would have to be gone through with, and then I told him he could count me out, as I did not want to get into any proposition like that.

Q. Was anything said about the barota?

A. Yes, sir, he told me the barota was in readiness. He said there is a barota behind the building.

Q. Was anything said as to who was to row that barota?

A. Yes, sir. Mr. Harn said I was the only one in the crowd who could handle a barota, and unless I went and rowed the barota there was no one they could get to do it.

Q. When did this conversation take place? Before or after supper?

A. Before.

127 Q. Where did you have your supper?

A. In Mr. Harn's house.

Q. In company with whom?

A. Mr. Dowdell and Harn. Mr. Dowdell did not eat there. He arrived there about supper time.

Q. About what time did you have your supper?

A. Eight o'clock.

Q. Was any conversation had in the presence of Mr. Harn with Mr. Dowdell respecting this same subject-matter?

A. Yes, sir.

Q. What?

A. Why, Mr. Dowdell said we would have to hurry up, as it was about eight o'clock, and it was either Mr. Dowdell or Harn that made the remark that we would go on with the thing, and not let anyone stand in the way of getting the safe out.

Q. Do you remember the language used?

A. No, sir.

Q. Was anything said as to the necessity for the hurry?

A. Yes, sir.

Q. What?

A. Why, Mr. Harn said he would go down and dispose of the or-

derlies and about that time we could get it out, and it would be over quick, so that we could then account for ourselves.

Q. Anything else?

A. Not that I remember.

Q. Nothing by Mr. Dowdell?

A. Not that I remember, no, sir.

Q. What did you thereafter do?

A. We all left the house together, and Mr. Harn proceeded
128 down the street to the Constabulary quarters, and Mr. Dowdell and I went to the beach, and proceeded to the rear of these quarters.

Q. Then what occurred in the rear of those quarters?

A. When I arrived there Mr. Harn was on the balcony with the safe, which he lowered, and Mr. Dowdell and I placed it in the barota and rowed with it out to sea, where we sunk it.

Q. What did you do thereafter?

A. I rowed back to the shore, and I went to Mr. Harn's house and I suppose Mr. Dowdell went to his.

Q. When did you see Mr. Harn again?

A. About ten o'clock.

Q. Where?

A. At his house.

Q. What was said?

A. He told me he had been placed under arrest by Major Murphy for disturbing the peace in a canteen, and that it was the best thing that could happen, as it would establish his alibi.

Q. What time did you retire that night?

A. I returned shortly after Mr. Harn arrived.

Q. Were you awakened during the night?

A. Yes, sir.

Q. About what time?

A. I was awakened about—between two and four o'clock.

Q. What occurred?

A. Mr. Harn wakened me up, and asked me to get up and help him to dispose of the money in his trunk, and the plan was to take it out of town and bury it. I told him I would not go out of town,
and he asked me where would be a good place to put it, and
129 I told him he could put it in the water-closet for all I cared, and he said that would be a good place, and we put it there.

Q. When you woke up, where was Mr. Harn?

A. By my bed.

Q. What was he doing?

A. Wakening me up, when I woke up.

Q. Do you recall doing anything else than that immediately thereafter?

A. Immediately after that we went to bed.

Q. I mean before you disposed of the money?

A. No, sir, I cannot recall anything else that Mr. Harn was doing.

Q. Did Mr. Harn sleep in the same bed?

A. No, sir, he slept in the same room, in which there were two beds in there—possibly five feet between the two.

Q. When you awakened where was he?

A. Standing by my bed.

Q. Was there a light?

A. Yes, sir.

Q. Did that light continue to burn in the house?

A. Until probably four o'clock. It continued to burn until we had finished putting the money down in the water-closet, and the other money above the ceiling.

Q. Before you went to sleep?

A. No, sir. Before Mr. Harn retired he put the light out.

Q. Where was the money taken from to bury it?

A. From Mr. Harn's trunk.

Q. Who had the key?

130 A. Mr. Harn.

Q. How was it taken—first the packages of paper, or the other?

A. No, sir, the silver money.

Q. Was that disposed of before the packages of paper?

A. Yes, sir.

Q. How?

A. I was down in the water-closet, and Mr. Harn went to and from the trunk with the silver, and hand- it to me, and I stayed there until it was all brought.

Q. How was it disposed of in the water-closet?

A. It was buried in a very small ditch that was dug.

Q. What was then done?

A. We went upstairs again and took a bath and went to bed.

Q. Was any disposition made of the paper-money?

A. The paper money was put above the ceiling.

Q. By whom?

A. Mr. Harn and myself.

Q. What occurred the next morning?

A. The next morning there was a boat in for Calbayog, and I took it for Calbayog, but immediately after starting out the boat was hailed, and Major Murphy and Mr. Scott came aboard, and Major Murphy ordered me ashore.

Q. Was there any other conversation than that you have related between you and Mr. Harn between two and four o'clock that morning?

A. Nothing more, except when I refused to go out into the country to bury the money, and before supper, there was a conversation.

131 Q. That you have not related?

A. Yes, sir.

Q. What was it?

A. I had refused to go down to get the safe, and Mr. Harn made a remark; I don't remember the exact words.

Q. Repeat it as near as you can.

A. It was to the effect that Col. Taylor had made a crack that I "was cold-footed and I be damned if I don't believe it!"

Q. Before you left the house Saturday morning was anything said between you and Mr. Harn about these funds?

A. Yes, sir.

Q. On Saturday morning, when you were about to leave?

A. Yes, sir.

Q. What was said?

A. Mr. Harn proposed that I take what I wanted of the paper-money and put it in my "baria" (basket) and take it home with me, but I told him I did not want any part of it, and left then.

That is all.

No cross examination.

Prosecution rests.
Defense rests.
Cas- submitted.

I, H. V. Bamberger, official reporter of the Court of First Instance for the twelfth Judicial District, do hereby certify that the foregoing one hundred and seven pages of typewritten matter, numbered from one (1) to one hundred and seven (107) *is* a full and cor-
132 rect transcript of all the testimony offered and produced at the trial of Wilson W. Harn, in the criminal case No. 597, tried before Honorable W. F. Norris, Judge of the Court of First Instance for the Twelfth Judicial District, and reported by me stenographically at Catbalogan, Province of Samar, on the eighth and ninth days of May, 1907.

Dated at Tacloban, Leyte, P. I., July 19, 1907.

(Signed) H. V. BAMBERGER,
Stenographer Twelfth Judicial District.

133 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the Province of Samar, 12th Judicial District.

Criminal Case No. 597.

LOS ESTADOS UNIDOS
contra
LOUIS A. DOWDELL, JR., WILSON W. HARN, Y CHARLES H. MAC-ILVAINE.

(Louis A. Dowdell, Jr.)

Tried Before Honorable W. F. Norris, Judge of the Court of First Instance for the Twelfth Judicial District, at Catbalogan, Samar, on the Tenth Day of May, 1907.

Appearances.

Mr. Isaac Adams, Sr. Emilio Araneta, for the government.
Mr. J. N. Wolfson, Mr. S. H. Southworth, for the defendant.

J. B. MURPHY, produced and sworn as a witness in behalf of the prosecution, states that he is thirty-six years of age, a married man, by occupation a Major and Senior Inspector Philippine Constabulary, a native of West Virginia and a resident of the municipality of Catbalogan.

134 Direct examination.

By Mr. ADAMS:

Q. Major Murphy, you are the Senior Inspector of Constabulary for the Province of Samar.
A. Yes, sir.
Q. And have been ever since July, 1906?
A. Yes, sir.
Q. And are acquainted with the defendant, Mr. Dowdell?
A. Yes, sir.
Q. How long have you known him?
A. Since July sixth, 1906.
Q. What position did he hold with the Constabulary during the months prior to January eleventh, 1907, after you came here?
A. Supply Officer Philippine Constabulary of Samar.
Q. Located in?
A. He has his office and quarters in Catbalogan.
Q. Supply Officer for the entire province?
A. Yes, sir.
Q. Did he have his office in the same building with you as Senior Inspector?
A. Yes, sir; not in the same room, but the same building.

Q. And that building is located *of* (on) first street, in the town of Catbalogan?

A. Yes, sir.

Q. Near the seashore?

A. Yes, sir; it is about twenty yards from there to the sea, more or less.

Q. How many stories are there to the building?

A. Two.

135 Q. What was kept down below?

A. The commissary.

Q. Above?

A. Offices, storerooms for arms, ammunition and other ordnance and supplies which he had.

Q. Who had charge of that store room?

A. Lieut. Dowdell, as Supply Officer. He had charge of all property, store rooms and buildings.

Q. Both down below and up above?

A. No, sir, not down below, but up above.

Q. How many safes did Lieut. Dowdell have charge of?

A. Two that he used himself, in his capacity as Supply Officer.

Q. Do you know what he was accustomed to keep in those safes? How he used one and the other?

A. His custom was to keep in one safe the funds, bills and currency, and other kinds of funds which come into his possession as Supply Officer. In the other he kept the subsistence funds and such other funds or money deposited with him or sent in to him from outlying stations of the province.

Q. In the second safe to which you referred were those funds in his possession in his official capacity as Supply Officer?

A. Yes, sir; both. Both came into his possession in his official capacity.

Q. In his official capacity as Supply Officer?

A. Yes, sir.

Q. Did either of these safes disappear on or about January eleventh?

A. Yes, sir, about that time.

136 Q. When did you first learn of its disappearance?

A. On the morning of January twelfth, sir.

Q. How did you learn of it?

A. Lieut. Dowdell—then Supply Officer—then came to the house of Mr. Whittier where I was eating breakfast and reported the loss of his safe and funds.

Q. Describe his manner, and what he said about it.

A. He came there much excited and, if I remember rightly, he said, "Great God, Major, my safe is gone!"

Q. Did he specify which safe?

A. No, sir he did not. He said the safe and all my money is gone.

Q. Did you have any conversation with him then or in the days immediately following, respecting the amount of the money?

A. Yes, sir.

Q. What did he say was the extent of the loss?

A. In the examination held by Governor Curry, Mr. Hoover and myself, in a statement made by him on the morning of January twelfth, the question was asked, "State the kind of money—the silver and paper," to which he answered, "Six thousand in paper and three or four thousand in silver."

Q. To whom did those funds belong?

A. They were funds pertaining to the Insular Government appropriated for the use of the Philippine Constabulary, and especially for the use of the Constabulary of Samar. They were Insular funds invoiced to Lieut. Dowdell in his capacity as Supply Officer, to be used to pay the obligations of the Constabulary of Samar.

Q. What occurred on the next day, in connection with Mr. Dowdell particularly and (in) this matter of the loss of the funds?

137 A. You refer to Sunday? Lieut. Dowdell was arrested and placed in temporary confinement, because of connection with the loss of the funds and the safe.

Q. Who else was arrested at this time?

Mr. SOUTHWORTH: I object to the question, on the ground that it is immaterial and incompetent.

COURT: Sustained.

Q. Where did Mr. Dowdell reside at this time?

A. In Catbalogan, on the last street. His house was on the west side of the last street. I don't remember *whether* number but either the third or fourth street. The last street toward the mountains.

Q. Counting the first from the sea and running parallel?

A. Yes, sir.

Q. Who resided with him?

A. No one at that time, sir, resided with him, to my knowledge.

Q. Do you know Lieut. Harn?

A. Yes, sir.

Q. Was Lieutenant Harn residing at that time in Catbalogan?

A. Yes, sir.

Q. Where?

A. On what is known as first street, sir.

Q. Can you tell about how many blocks from Lieut. Dowdell?

A. Six or seven blocks, more or less.

Q. Where was Lieut. Harn's house with reference to Lieut. Dowdell's house and the Constabulary quarters?

A. The Constabulary quarters is situated on first street. Lieut. Harn's house is situated on first street, between the third or

138 fourth street south of the Constabulary headquarters, on the same street on first street.

Q. So in passing from Lieut. Dowdell's house to the Constabulary headquarters you passed Lieut. Harn's house?

A. Not exactly.

Q. It would not be out of your way, would it?

A. Yes, sir, it would. Lieut. Dowdell's house is situated on the last street in the town, counting from the sea, and I think farther south than Lieut. Harn's.

Q. Farther south than Lieut. Harn's house?

A. Yes, sir.

Q. Why could one not pass down the street where Lieut. Harn's house is as well as any other street?

A. You could do it, but it would be out of one's way. Naturally, a man would go that way. That is what I mean.

Q. How much longer would it be to go the other way?

Mr. SOUTHWORTH: I object to the question, on the ground that it is immaterial.

Objection withdrawn.

A. Well, it is practically two blocks. And it would be more natural for a man to go down to first street when coming up to the building, as it is the cleanest and best street of the *twon* (town).

Q. And in that way he would pass Lieut. Harn's house?

A. Yes, sir.

Q. What office did Lieut. Harn hold prior to the disappearance of these funds?

A. Assistant Supply Officer to Lieut. Dowdell. He was Commissary and Quartermaster, and Lieut. Dowdell was paymaster
139 and had general supervision of the supply department.

Q. Was he holding that office at the time of the disappearance of these funds?

A. No, sir, he had been relieved or about to be, rather. He had been relieved by order, but had not turned over his property. He had his invoices and receipts made out, and part of the things had been turned over.

Q. What was the relation of Lieut. Dowdell to the Constabulary at that time?

A. An order had been issued relieving him from——

Mr. SOUTHWORTH: I object to the answer, on the ground that it is not the best evidence.

COURT: Sustained.

Q. Were you in Catbalogan during the month of January?

A. Yes, sir. I arrived in Catbalogan on the night of the eighth, or the morning of the ninth of January.

Q. Did you have any conversation with Lieut. Dowdell, after your arrival in Catbalogan, respecting his relations to the Constabulary?

A. Yes, sir.

Q. Repeat that conversation.

A. Lieut. Dowdell visited me at my quarters on the evening of the ninth, and came into my room, and during the conversation he told me about his former trouble with the Constabulary, about a leave of absence when he went to Japan, and did not go to the States, as he said he intended, but for some reason the way he decided not to go. He seemed very despondent, and spoke about his service—how he had served the government a long time (I forget the time he had been in the government service),
140 and that the government was about to throw him out without any consideration and without considering the faithful service (he) had already rendered; and he went on to state that there

was not much use for a man to do the right thing, when they kicked them out for a small reason like that.

Q. Did he say anything about his financial condition?

A. He said to kick him out without a red cent.

Q. Was there anything about him that would indicate that he had been drinking?

A. I could not state.

Q. Did he seem to be affected particularly in the face?

A. Very much so. Very unusual for him, as he is generally cool.

Q. What else did you notice?

A. I noticed that he was very despondent and very much worried. I advised him to be the same as he had always been and to pay no attention to it. In other words, I told him not to climb any fences until he came to them. I told him to be himself, and not to be different that he had been.

Q. What did he say to you respecting his probable removal or remaining in the service in that position.

A. He said that the cause of his being relieved as Supply Officer was a false certificate he had made.

Q. I asked you about the fact of his being relieved.

A. That is what he said.

Q. That he was or was not relieved?

A. He was, and ordered to Manila, and a new official was coming here. He told me he had received a personal telegram from Lieut. Canuse, asking about quarters here, and he said that was to him positive evidence that he was to be relieved.

141 Q. Was he in a mental condition so that he wept?

A. Yes, sir, he cried in my presence in the house.

Q. Have you any knowledge respecting Lieut. Dowdell receiving, in his capacity as Supply Officer, funds from Manila about the date of this occurrence, the day when he informed you that his safe had disappeared?

A. Only from his accounts and from hearsay, sir. I had been told he had received funds.

Mr. ADAMS: Strike it out.

Mr. SOUTHWORTH: I object to the statement that he knew from the accounts, and ask that it be excluded as incompetent evidence.

Mr. ADAMS: Strike it out. Strike the whole answer out.

Question withdrawn.

Q. What were the relations existing between Lieutenants Dowdell and Harn on the occasion, and prior thereto, *fo* the disappearance of the funds? I refer to their social relations.

A. Very friendly.

Q. As to their association?

A. As to that, I could not say.

Q. What kind of a safe was it in which those funds were kept?

A. It is called a field-safe, sir. Small iron key lock safe.

Q. Who kept the key of that safe?

A. Lieut. Dowdell, sir.

Q. Was there more than one key in Catbalogan at that time?

A. Not to my knowledge, sir.

Q. Are you acquainted with the kind of a lock used on that safe?
A. Yes, sir.
142 Q. How does it work?
A. You lock it by inserting the key upside down, and taking hold of the handle of the safe and turn the key, which moves a bar. The same in unlocking it.
Q. How many keys is it customary to belong to safes of this kind?
A. Two keys are always with each safe.
Q. Where is the one kept?
A. One key is kept in the office of the Chief of Constabulary, in his safe.
Q. And the other?
A. Is kept by the Supply Officer having the safe, sir.
Q. When Lieut. Dowdell was arrested on Sunday, the thirteenth of January, was anything found on his person, to your knowledge?
A. Shortly after arresting the three lieutenants Dowdell, Harn and MacIlvaine and had been placed in temporary confinement, I searched Lieut. Dowdell and I found the following articles and money on him: One safe key number 9853, one safe key number 9835, two keys of ordnance room 9L8V2, three small keys, personal, one letter containing thirty-eight pesos, the letter addressed to Supply Officer, Samar, containing a certificate of registration number 86469 and one discharge certificate belonging to former Constabulary soldier by the name of Ponceon, a letter addressed to Louis A. Dowdell containing two sheets of paper, from the province of Isabela, one small black flat pocketbook with association card Elks and a card marked fifty cents——

Mr. ADAMS: Pardon me.
Mr. ADAMS: Move to strike out all the answer excepting the matter of the keys.
143 No objection.
COURT: Strike it out.

Q. Besides those keys, did you find any money?
A. Yes, sir, money and checks.
Q. What money or checks did you find?
A. Two fifty peso bills, four ten pesos bills, one gold piece ten yen, wrapped up in white paper, one hundred dollar gold bill, one Treasurer check number 475415, another Treasurer check number 454944, another Treasurer check number 454974, another Treasurer check number 454038; the first check mentioned amounted to P83.33, the second check amounted to P83.33, the third check amounted to 198.50 and the fourth check amounted to P83.33 pesos making a total of P798.49.
Q. Did you take any steps to recover the funds and safe that Lieut. Dowdell had reported as lost?
A. Yes, sir.
Q. What success did you have respecting the safe?
A. The safe was recovered from the sea, back of the office building, sir.
Q. Where did you first see it?
A. In my office, about noon, on the nineteenth of January?

Q. Was it locked or unlocked?
A. It was locked.
Q. What did you do respecting the safe?
A. Mr. Berry, the District Auditor and myself opened the safe and found one twenty-five cent gold piece—a quarter and ten cents mex.
Q. Anything else?
A. No, sir.
144 Q. What success did you have, if any, respecting the funds?
A. A part of the funds were recovered in the house occupied at that time by Lieut. Harn.
Q. What was the amount of the funds recovered?
A. Nine thousand, nine hundred and seventy-one pesos and twenty-six cents (P9971.26).
Q. What portion of that was in paper?
A. Six thousand, one hundred and eighty-seven pesos (P6187).
Q. What portion in metallic money?
A. Three thousand, seven hundred and eighty-four pesos and twenty-six cents (P3784.26.)
Q. Where were those funds found?
A. They were found buried in the water-closet of the house referred to as occupied by Lieut. Harn and found in sacks and socks buried slightly under the ground in the rear.
Q. Were all the funds found there?
A. No, sir, the bills and one sack of five cent pieces—nickels—was found upstairs in the same building over the room used as a sleeping room by Lieut. Harn; over the ceiling and in the north part of and inside of the room, in a glass jar.
Q. Take the currency. In what sort of packages was it. Describe it as to its condition, as to age and newness.
A. Most of it had the appearance of newness, some of it was bright.
Q. The paper currency?
A. A great deal of it. Most of it was practically new. Some was in the original packages as it comes from the Treasurer's office in Manila; some of the original bands were on there, and they had the Treasurer's check on them.
145 Q. Now describe the metallic money.
A. The pesetas and pesos were very new. The pesetas I remember distinctly.
Q. What amount was there in pesetas?
A. One sack of pesetas, one thousand pesos in all.
Q. And the pesos?
A. I cannot give the exact amount. Two sacks contained pesos and one sack contained various coins.
Q. How many sacks were there?
A. Two sacks of pesos.
Q. The contents amounted to?
A. One thousand pesos each.
Q. As to the other currency?
A. Very new-looking.

Q. Outside of the three sacks containing one thousand pesetas and the two containing pesos, and one sack containing various kinds of coins, the balance was in small coin, was it?
A. Five, ten and twenty, and various coins, sir.
Q. Amounting to something like seven hundred pesos?
A. Yes, sir.
Q. What was done with the money that was found?
A. It was immediately carried to the Treasurer's office, Province of Samar, then Mr. Whittier, and deposited in a large safe in that building. It was sealed by the District Auditor, Mr. Berry.
Q. Did you come across the money accidentally?
A. No, sir.
Q. How did you come across it?

146 A. The Lieut. MacIlvaine, in a confession made to Col. Bandholtz and myself, in the provincial carcel, directed us and took us where the money was.

Q. Who was Lieut. MacIlvaine at that time?
A. Lieut. MacIlvaine was a first lieutenant of the Philippine Constabulary on duty in Lope de Vega. He was here on authority of the senior inspector.
Q. Was he here when you left here in the early part of January?
A. No, sir. I did not leave here in the early part of January. I left in December.
Q. When you returned on the night of the eighth or the early morning of the ninth, state whether you knew or not that Lieut. MacIlvaine was here?
A. On the morning of the ninth, when I went to my office, Lieut. MacIlvaine reported to me, and as I had his examination papers I told him I would examine him.
Q. Who examined Lieut. Dowdell's accounts in the month of November?
A. Myself.
Q. At that time was there or was there not any United States paper currency among his official funds?
A. I remember that at that inspection and others of counting a one hundred dollar gold bill of United States currency.
Q. Of a single one hundred dollar gold bill?
A. Yes, sir.
Q. Are there any other facts bearing upon the matter of the funds that you care to present to the court?
A. Yes, sir.
Q. What does it relate to?

147 A. To the funds received just prior to the report of the disappearance of the safe.

Q. What do you know about that?
A. From a statement made by Lieut. Dowdell to myself as Senior Inspector.
Q. Was that statement in writing?
A. He made a verbal statement before the committee.
Q. Was it taken down in writing?
A. Yes, sir.

Mr. SOUTHWORTH: We object to the proofs, unless the writing is produced.

Q. Under what conditions was the statement made?
A. Before the committee organized to investigate the disappearance of the safe and funds.
Q. Who took it down?
A. A stenographer, Mr. Carrigan.
Q. For what purpose was it taken, and what was done with the paper containing the statement in writing?
A. It was used in the investigation instigated by myself as Senior Inspector to assist me in locating the probable guilty parties.
Q. This statement was made before the committee?
A. The board that I requested to assist me.
Q. Was the statement all reduced to writing at the time he made it?
A. Not at that time. It was written by a stenographer and reduced to longhand.
Q. You have that statement?
A. Yes, sir.

COURT: The statement would be the best evidence, and the objection is sustained.

148 Mr. ADAMS: I offer the statement in evidence, as Exhibit "A."

Mr. SOUTHWORTH: I ask the court permission to cross-examine the witness, to ascertain the admissibility of the document.

Cross by Mr. SOUTHWORTH:

Q. Major Murphy, did you take this statement down at the time it was made?
A. I did not.
Q. Who took it down?
A. A stenographer, Mr. Carrigan.
Q. How did he take it down?
A. In shorthand and longhand. He wrote in both at the time.
Q. Who wrote it out on the typewriter?
A. He himself. I don't know whether he wrote this particular part.
Q. You don't know.
A. No, sir.
Q. Is this statement signed by the stenographer?
A. No, sir.
Q. Is there any certificate that it was taken down correctly and correctly transcribed from the stenographic notes?
A. No, sir.

Mr. SOUTHWORTH: We object to the introduction, on the ground that it is not properly identified.

149 COURT: Ruling reserved.

That is all.

Cross-examination.

By Mr. SOUTHWORTH:

Q. Major Murphy, let me ask you. At the time Lieut. Dowdell came to see you on the night of the ninth of January had he been drinking?

A. I judged so at the time, on account of his unusual appearance and his talk. He seemed worried and was not his talk.

That is all.

Redirect examination.

By Mr. ADAMS:

Q. After you have looked at the memoranda of the statement made by Lieut. Dowdell on the occasion in question have you any recollection of a statement made by him respecting the amount of funds which he received from Manila immediately prior to this loss?

A. Yes, sir.

Q. Please state what he said?

Mr. SOUTHWORTH: Same objection.

COURT: May answer.

Mr. SOUTHWORTH: Exception.

A. It was in reference to funds that had just been received prior to the disappearance of the safe and funds. He stated that he had received an invoice of funds, and that he examined the funds and found them correct as invoiced.

Q. Did he state the amount?

150 A. No, sir, not the amount. He just referred to the invoice of funds from Manila, and stated that they were correct as stated in the invoice.

Q. Was that all the statement?

A. Yes, sir.

That is all.

Recross-examination.

By Mr. SOUTHWORTH:

Q. Do you recall all of the statements of Mr. Dowdell's testimony on that occasion?

A. No, sir, only by reference to the memoranda, which statement assist my memory.

Q. You don't recall of your own knowledge his entire testimony on that point?

A. No, sir.

Q. Nor the substance of all his testimony?

A. I recall the substance.

Q. All of it?

A. Part only.

That is all.

COURT: It is admitted and agreed by counsel to admit the testimony of Mr. Berry, as given in the trial of Wilson W. Harn, in this case and to be considered in this case.

151 CHARLES H. MACILVAINE, produced and sworn as a witness in behalf of the prosecution, states that he is twenty-seven years of age, a single man, of no occupation at present but is an ex-Constabulary officer, a native of New York and a resident of Samar.

Direct examination.

By Mr. ADAMS:

COURT: It is agreed — counsel that the testimony of this witness, as presented in the trial of Wilson W. Harn, be received as testimony in this case, with the exception of that statement of the witness in the testimony in the Harn case that Mr. Harn told the witness that Dowdell brought a package of bills, wrapped in a newspaper, to Mr. Harn's house on the evening of January eleventh.

Q. How long was Mr. Dowdell with you in Lope de Vega in December prior to this loss of the safe and funds?

A. I think, though I am not positive, that he arrived in Lope de Vega on the sixteenth of December. It was either the fifteenth, sixteenth or seventeenth—one of those days. He left on the twenty-sixth of December, immediately after Christmas.

Q. Did Mr. Dowdell, while with you, tell you anything about the relations of the accused and the Constabulary?

A. Yes, sir, he told me about his trouble with his leave, and also showed me a letter which he had received from a Mr. Oleman, if I remember rightly.

Q. Anything farther?

A. Nothing else, except that he was very despondent at that time, and believed that the circumstance would be the cause
152 of his severance from the Constabulary.

Q. After you arrived here, what, if anything, did Mr. Dowdell say to you about that same matter?

A. When I arrived he told me he was to be relieved and that he was ordered to Manila, and he said, "You know what that means." And then he received a telegram from Mr. Canuse inquiring about quarters.

Q. By whom was the first suggestion made respecting this occurrence that you have testified to as to safe and the funds and the circumstances connected with them?

A. I believe that Mr. Harn made the first suggestion that I heard, if I remember rightly.

Q. Was any such language used by the defendant as this: "I should feel better if my safe was in the bottom of the sea"; the language being used in connection with his accounts?

A. Yes, sir.

Q. When was that language used?

A. It was in the afternoon—I think it was Wednesday afternoon, though I am not positive whether it was Wednesday or not,—we

were playing cards and drinking in Mr. Harn's house, and the question came up about accounts. We were not quite able to straighten out the accounts, and nobody seemed inclined to work on them. And the question was asked what we were going to do, and several suggestions, as "Throw them out of the window—anything at all in order to get rid of them!" and I remember the defendant saying then, "I wish my safe and accounts were out in the bay," and at that time we had a joke that was gotten out of some comic paper. The joke was "to come inside," and the joke was put as the next
153 entry in my accounts. The joke in question was: on the bank of a river there was a high stone wall and on the wall there was a label "Lunatic Asylum." There was a man fishing on the bank of the river, and an idiot puts his head over the wall and asks "What are you doing?" and the man answered, "Fishing." Then the idiot said, "How long have you been there?" and the man answered, "I have been here about two hours," and then the idiot said, "Come inside." That was the last entry put in my account book.

Q. In the conversation given did it refer to your accounts?

A. Yes, sir, at that time.

Q. Had there been any talk about disposing of these funds, in any way?

A. No, sir, the funds were never mentioned. No funds were mentioned at that time.

Q. After the occurrence of the night of January eleventh and going to Saturday morning. Did you see Mr. Dowdell before going downstairs?

A. Yes, sir, he called at Mr. Harn's house.

Q. State conversation that might have occurred respecting the transactions of the night before that you recall.

A. I remember seeing Mr. Harn give Mr. Dowdell some checks, but as to actual conversation I don't remember.

Q. Was there anything said indicating Mr. Dowdell's expectancy of being charged with the offense, or not?

A. Yes, sir. I remember that Mr. Dowdell said he would probably be suspected, and he might be arrested for this, but that there would be nothing proven, and that Mr. Harn and myself should give him all the moral support we could if he was arrested. All that would be possible for us to give him.

154 Q. Was any observation made as to how he could play his part?

A. Yes, sir.

Q. What?

A. Mr. Dowdell said we should all go down and watch when the discovery was made that the *same* was gone. He said he was a natural-born actor and, if he wanted to, he could cry real tears. I remember that.

That is all.

Cross-examination.

By Mr. SOUTHWORTH:

Q. Mr. MacIlvaine at the time Mr. Dowdell was on a visit to you in Lope de Vega during the latter part of December he was drinking excessively, was he not?

A. Yes, sir, considerable.

Q. Well, from the time you arrived in Catbalogan, about the fifth of January, until this occurrence, Mr. Dowdell was drinking, was he not?

A. Yes, sir, continually. We were all drinking continually.

Q. Mr. Dowdell was drinking night and day?

A. Yes, sir.

Q. He was full nearly all the time you were here, was he not?

A. Yes, sir.

Q. Now, at the time of this conversation that you referred to, in which he said he wished his safe and so forth at the bottom of the sea or out in the bay, all of you were drinking at that time?

A. Yes, sir. We had been trying to get my accounts straightened up for three days, and none of us were exactly sober. We
155 had been working for three days on my accounts in the office, but could not do anything, and that day we asked permission to go to Mr. Harn's house to work, as there was too much noise in the office. When we arrived at the house we decided we would have a game of cards, before starting to work to find out who would pay for the beer, and as we got interested we forgot all about working.

Q. You drank more beer in Mr. Harn's house than you did in the office?

A. Yes, sir.

Q. Now, you regarded this remark of Mr. Dowdell at that time as a sort of remark made in a drunken revel in the same light as the "Come inside," did you not?

A. Yes, sir, and whenever any person came in he was immediately made acquainted with this joke of "Come inside." We called people we saw going along the street, saying "Come inside," and when they came in we made them acquainted with this joke.

Q. There never was any agreement between you and Dowdell and Harn to take these funds, was there?

A. No, sir.

That is all.

Redirect examination.

By Mr. ADAMS:

Q. You don't mean to say that the drinking was tak*en* place at the headquarters of the Constabulary?

A. Yes, sir, I remember having a drink at the headquarters.

Q. During these days?

A. Yes, sir, I think it was.

156 Q. Do you remember any other occasion?

A. No other occasion, no sir.

Q. You took your examination at this time?

A. Yes, sir, I took my examination on Thursday afternoon and Friday morning.

Q. Were you in such a condition that you could answer the questions?

A. No, sir, I would not drink while I was taking the examination. I quit to take it.

Q. Was the examination written or oral?

A. Written. Nothing oral in the examination.

Q. Are you a drinking man?

A. No, sir, I very seldom take a drink of any kind. Never except when in company with friends. I have a bottle of whiskey and twelve bottles of beer in my house in Lope de Vega for a long time—several months—and they have never been opened.

That is all.

157 IGNACIO DILAO, produced and sworn as a witness in behalf of the prosecution, states that he is twenty-five years of age, a single man, by occupation a Constabulary soldier, a native of Borongan and a resident of Catbalogan, Samar.

Direct examination.

By Mr. ADAMS:

Q. Are you acquainted with Mr. Dowdell?

A. Yes, sir.

Q. Were you an orderly of the Philippine Constabulary and stationed at the headquarters under the direction of Mr. Dowdell on the days immediately preceding the disappearance of the Constabulary funds and the safe last January?

A. Yes, sir.

Q. On the day before these funds disappeared, and the safe disappeared, did Mr. Dowdell give you any instructions respecting some boxes?

A. After the money was taken, no, but before, yes, sir.

Q. The day before.

A. Yes, sir. I was working there, and I was ordered to get the boxes in the afternoon and the next morning was when the safe was searched for.

Q. Who, if anyone, accompanied you to get the boxes?

A. In the morning I was ordered by Lieut. Dowdell to go and get some empty coal-oil boxes, and I was alone, and in the afternoon I was ordered to go with him and get some boxes.

Q. Then Mr. Dowdell accompanied you, did he?

A. Yes, sir.

Q. Where did you go?

A. Down underneath the Constabulary headquarters,
158 where the empty boxes were generally put.

Q. Who was there at the time, besides yourself and Lieut. Dowdell?

A. I did not see any other person.

Q. What did Mr. Dowdell say to (you) while in that room, about those boxes, if anything?

A. He told me to carry the empty boxes first, ordering me to fill them with rubbish, and after that I took the two boxes upstairs, but did not go into the room through the same door we had left, but went around behind and went in.

Q. Was the rubbish you put in the boxes excelsior?

A. I don't know whether it was or not, but it looked like wood shavings.

Q. In what room did you leave them upstairs?

A. In the armory, in the first room.

Q. Next to the door that you enter at the head of the stairs?

A. Yes, sir.

Q. Was there anything in them when you left them other than the shavings and stuff you put into them down below?

A. I did not see anything.

Q. Where were you accustomed to sleep at nights during those days?

A. In the headquarters building.

Q. Did you sleep there that night?

A. I asked permission from Lieut. Harn that evening to sleep outside, and he granted the permission I asked.

Q. Well, did you sleep there that night?

A. No, sir, I did not.

That is all.

159 No cross-examination.

JULIAN CASIMIRO'- testimony given in the trial of Wilson W. Harn, to be considered in this case, excepting that part in which he stated that he was sent out for another woman. (Transcript W. W. H. pages 77 to 83.)

JUAN BELGAR'S testimony as given at the trial of Wilson W. Harn to be considered in this case. (Transcript W. W. H. pages 67 to 73.)

160 SIXTO VISTA, produced and sworn as a witness in behalf of the prosecution, states that he is sixteen years of age, a single boy, by occupation a muchacho, a native and resident of Catbalogan.

Direct examination.

By Mr. ADAMS:

Q. Are you acquainted with Mr. Dowdell?

A. Yes, sir.

Q. Were you serving as his muchacho last January, up to the time you heard of the occurrence about Constabulary funds being lost?

A. Yes, sir.

Q. Do you remember the day before you heard of that loss?

Question withdrawn.

Q. Do you remember the night before you heard of the loss of Mr. Dowdell giving a supper and having some friends there?

A. Yes, sir.
Q. Do you remember any order that Mr. Dowdell gave you that night respecting the taking of some petroleum boxes and cans anywhere?
A. Yes, sir, I remember that he sen*d* some coal-oil—two coal-oil boxes—to Lieut. Harn's house.
Q. About what time did Lieut Dowdell come in that night?
A. I calculate about six-thirty.
Q. Did he go out again?
A. Yes, sir.
Q. Did he come in a second time?
A. Yes, sir.
161 Q. What was his condition, as to being dry or wet?
A. He was wet from his thighs down, and also his shoes were wet.
Q. How do you know?
A. He came out into the parlor where I was sitting, and I saw him.
Q. Do you know whether his pant-legs and shoes were slightly wet or very wet? How did they look?
A. They were pretty wet, because he changed clothes immediately.
Q. What did he do with those wet clothes and shoes, if anything?
A. He put them out in the kitchen, and I saw them out there when I closed the kitchen.
Q. The next morning, what did you do with them, if anything?
A. I placed them out to dry.

That is all.

Cross-examination.

By Mr. SOUTHWORTH:

Q. Do you know whether it was raining that night?
A. It was sprinkling.
Q. Did Mr. Dowdell have a rubber-coat?
A. Yes, sir.
Q. That was wet, too, was it not?
A. Yes, sir.
Q. What time was it when Mr. Dowdell came home wet, as you say?
A. I don't know.
Q. Don't you know what time he left home the second time?
A. No, sir.
162 Q. Well, can you tell whether it was six o'clock, seven, or nine o'clock; or, was it ten o'clock?
A. I don't know.
Q. Well, was it five o'clock when he left there?
A. I don't know; I was busy and I did not notice.
Q. Well, what time did he comes back home—what time did he come back the second time?
A. I did not notice.
Q. Was it eight, nine or ten o'clock?

A. I don't know. There was no watch at the house. I have a watch, but I did not carry it with me at that time.
Q. Well, was it two o'clock when — got (?) there.
A. No, sir.
Q. How long before two o'clock was it?
A. I don't know. I closed up as soon as he got home and went to bed and went to sleep.
Q. Did Mr. Dowdell stay at home all that night?
A. I don't know whether he did or not, but he was there when I went to sleep.
Q. Was he there when you got up in the morning?
A. Yes, sir.

That is all.

163 Major MURPHY, recalled in behalf of the prosecution.

Direct examination.

By Mr. ADAMS:

Q. Have you the money and checks which you took from Mr. Dowdell at the time of his arrest on Sunday, January thirteenth, 1907?
A. I have part of the money and all the checks.
Q. Can you produce the checks?

Question withdrawn.

Prosecution rests.
Defense rests.
Case submitted.

I, H. V. Bamberger, Official Reporter of the Court of First Instance, do hereby certify that the foregoing twenty-seven pages of typewritten matter numbered from one (1) to twenty-seven (27) *is* a full and correct transcript of all the testimony offered and produced at the trial of Louis A. Dowdell Jr., in the criminal case No. 597, tried before Honorable W. F. Norris, Judge of the Court of First Instance, and reported by me stenographically, at Catbalogan, Samar, on the tenth day of May, 1907.
Dated at Tacloban, Leyte, P. I., July 20, 1907.

(Signed) H. V. BAMBERGER,
Stenographer 12th Judicial District.

164 Yó Lázaro Cinco y Poblete Escribano del Juzgado de Primera Instancia de la Provincia de Sámar, Islas Filipinas.

Certifico que las precedentes 259 paginas útiles constituyen el proceso completo de la Causa Número 597 seguida por los Estados Unidos de America, Islas Filipinas, contra Louis A. Dowdell, Jr., Wilson W. Harn y Charles H. MacIlvaine sobre malversación de caudales públicos.

Dado por el Honorable Juzgado en Catbalogan hoy día veintinueve de Julio de mil novecientos siete.

(Signed) LÁZARO CINCO,
Escribano del Juzgado de Primera Instancia de la Provincia de Sámar, P. I.

165 EXHIBIT "A."

BUREAU OF CONSTABULARY,
CATBALOGAN, *Jan.* 19*th*, 1907.

To Major J. B. Murphy.

SIR: It is my intention to write here a full, complete and true history of the robbery of the safe and money from the office of Mr. L. A. Dowdell Supply Officer P. C., on the night of Jan. 11th 1907.

I will endeavor to show clearly why I came to Catbalogan and the different things that lead up to this act and the motives that prompted it.

I, having had some difficulty in striking a balance on my returns of Subsistence for the month of October, sent the referred to returns to Major Murphy at Catbalogan, with a note to him saying that I was unable to find any error, and requested him to help me straighten the account out upon his arrival in Lope de Vega, which I expected at that time would be either in the month of November or December.

In the middle of the month of Dec., Lt. L. A. Dowdell arrived at Camp McCrea (my station) to pay the Company and with instructions from Major Murphy to go over my books with me and help me find the trouble.

Mr. Dowdell having brought with him a transcript of his account-book with the Company, we began to compare it with my books, and found a difference in the two accounts. It then became apparent that we could do no more until we could get his account-book which was in Catbalogan.

166 For this reason I telegraphed Lt. Harn to bring the book in question to Lope de Vega, if he could get a week's leave and come up. I also wanted to see Lt. Harn regarding a personal matter, and was anxious to have him spend Xmas with us. Lt. Harn not coming to Lope de Vega, and we not being able to accomplish anything without the book, and as the quarter was drawing near an end, it became evident that a visit to Catbalagon was necessary in order to enable me to secure the proper datta to render my returns. For this reason I proceeded to Calbayog, and telegraphed for authority to visit Catbalogan. The authority was granted and I came. Knowing Lt. Harn, I put up at his house upon arrival, and in the afternoon of the day I arrived Harn and I went hunting on the small Island of Darahoy: we also went hunting at the same place the following day.

That evening Lt. Dowdell called at Lt. Harn's and sent over to his (Dowdell's) house for his supper to be brought to him. This was done several times during my stay at Lt. Harn's house (about four or five days). We were almost continually together all of the

time I have been here, and we all drank considerable beer, altho at no time was anyone intoxicated, but were always rather hilarious.

All during this time Lt. Dowdell was very despondent and I think that accounted for the drinking.

He continually talked about the "hard deal" he was getting from the Government. He, he said, had gone on leave last year and instead of going to the States on his leave as he had intended, he spent the leave in Japan. He held, that it was no one's business where he spent his leave, that he had earned it by hard work and was entitled to spend and enjoy it where he pleased. He said that he had
167 toiled for the Gov. for 9 years and their only appreciation of that fact, was, to throw him out bag and baggage without a red cent, for the slightest of faults.

I do not remember just exactly how and when the subject of the safe came up. I do, however, remember Lt. Dowdell say- in a jest that if his safe and all his papers were out under the waters of the bay he'd feel happier.

This was said at several different times, and one time Lt. Harn proposed a scheme to take the money and bury it. I, even now believe he said that as a joke at the time.

The next day however, the subject bobbed up again (the 10th) and Dowdell came in, in the evening with a big bunch of paper bills and said that he would clear the office building of people and that Harn and I should go down, get his safe and put it so far out in — bay that no one could ever find it. This was not done, as no one carried out his part and I did not yet think it to be a serious matter. That night I prepared to leave on the following day for Calbayog as I understood that there would be a boat. On the morning of the 11th while sitting with Major Murphy at his desk, I heard Lt. Jamias tell the Major that the boat would leave at 2 P. M., would stop at Calbayog, Carigara and then proceed to Manila.

I went then to the canteen of one Leocadia with Harn and from there to his house. I remained in the — all that afternoon as I was not feeling well owing to the immense amount of beer I had drank during my stay there.

Feeling better towards evening, I was sitting in the window at about 6 P. M. when I saw Sergt. Robinson? come down the street: I called to him and h came upstairs, and we sat in the
168 window sill drinking a glass of beer when Mr. Carrigan, also came along the street: He also came upstairs and joined us in a glass of beer.

While we were sitting there a push cart came to the house drawn by several soldiers and contained 2 coal oil cases. Robinson and Mr. Carrigan left the house while these cases were being brought in. When the cases were opened they proved to contain several sacks of silver money each. I had heard lots of talk about taking this safe out and joined in a lot of it but I s*ware* that when I saw that money there, that, that was the first time I realized that the whole thing was not a joke. Dowdell came in about the time of the arrival of the push cart and brought with him the paper money rolled up in a newspaper. This was put into a glass jar which I had purchased

the evening before full of candy to take to Lope de Vega with me, and placed in Harn's trunk by Harn and myself. I remonstrated even then but was told that the thing had gone that far and would have to be gone through with.

Harn said that a barota was in readiness behind the building and that all I had to do was to go with Dowdell, receive the safe which he would let down to me, put it in the barota, row out to sea, throw it overboard and come home. I went with Dowdell to the rear of the office building, found the baroto and Harn on the back balcony of the building with the safe. He lowered it on a rope, I received — on my shoulder and placed it in the baroto. Dowdell and I then rowed out in the bay and put the safe in the water at a point near and S. E. of the end of the old pier. It being empty, floated, and we had to hold it several seconds until it filled with water and
169 sank. That being done, we rowed to the end of the new pantalon, secured the baroto by causing the outrigger to catch over a stump and returned to our places of abode.

Arrived at Harn's house I found a woman there whom he had sent for early in the evening. I undressed and went to bed. About 10 P. M. Harn came in and told me that the Major had placed him under arrest for disturbing the peace in a tienda: that it was the best thing that could have happened, as it established his alibi. I went to sleep shortly after Harn came in but was awakened by him at between 2 and 4 o'clock, to help dispose of the money which was still in his trunk. The woman had gone. We put the silver in sacks down the water-closet in Harn's house and the paper money was put up over the ceiling of his bedroom.

How I took the boat the next morning and the investigation that followed is too well known to need mention here.

After leaving the office at noon the 12th I went to Harn's house, where I found Harn and Dowdell just finishing burying the money in the water closet deeper than it had been buried the previous night. I also noticed a large fire in the fire-place, but other than some straw money sacks I do not know what was burned there. These sacks, however, were not connected with the affair to my knowledge as the only sacks I saw were of canvas.

That afternoon I staid around the office, and in the evening Harn said that the Governor wanted us to get out and patrol the streets. I started out with Harn and Dowdell and we walked around the block. The idea was so hypocritical to me that I would not accompany them any farther so returned to the house and played
170 salatair until Harn came home then we went to bed.

The only motive I had for taking the part I did in this horrible affair was a sympathetic feeling for Mr. Dowdell and a desire to help him in his difficulty. It may seem superfluous for me to say here that the idea of personal gain of any of the stolen money was as odious to me as the whole thing seems now, but it is the truth, so help me God.

My desire to confess to my share of this horrible work and to return the money, the safe and do everything else possible in my power so far as possible for the great wrong I have done, has been a

great longing to unload my conscience of a terrible load which has been crushing me and which I am unable to bear.

Before telling the story of this to Col. Bandholtz I had already written a note to Major Murphy requesting an interview with him and to Governor Curry for the purpose of telling them the same thing.

If any information is desired regarding the "personal matter" referred to in the fore part of this writing, I will gladly furnish it, but it has no connection with this case.

In conclusion, I wish to state that the only regret I have in making this statement is that I had not made it sooner than I did. A load of oppression has been lifted from me since I made this confession that words cannot describe. No one can imagine the awful sufferings of a guilty conscience unless one has experienced something like I have.

I believe I have made a clear, concise and absolutely true statement. If, however, I have left anything unexplained or if it is thought I might give more light on any of the subjects touched, I will be only too glad to answer any question that might be put.

171 I have done all I can and I am glad.

Very respectfully,

(Signed) CHARLES H. MACILVAINE.

EXHIBIT "C."

THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the Province of Samar, 12.o District.

THE UNITED STATES, Plaintiff,
versus
LOUIS A. DOWDELL and WILSON W. HARN, Defendant-.

Subpœna.

To Chas. H. MacIlvaine, resident of the municipality of Catbalogan, Greeting:

You are hereby commanded to be and appear at the Court of First Instance in and for the province of Samar, on the fifth day of March, 1907, at eight o'clock in the morning, then and there to testify in the action of the case for the misappropriation of public funds against Louis A. Dowdell and Wilson W. Harn there pending, bringing with you your personal cedula.

Hereof fail not, under penalty of the law.

Witness the Honorable Judge of said Court, this fourteenth day of February, 1907.

(Signed) LAZARO CINCO, *Clerk.*

(Here follows diagram marked page 172.)

173 EXHIBIT "A" (HARN).

United States Signal Corps.

Telegram received.
2 w. x. u. 15 paid. Com*l* 11 23 A. H.

WRIGHT, Jan. 30th.

Hoover, Catbalogan:

You are authorized to collect two hundred pesos from Harn for me.

MAYER.

(Pencil notation:) Major Murphy: Please pay to Mr. C. L. Hoover the sum of P200. for Mr. W. C. Mayer.

(Signed) W. W. HARN.

EXHIBIT "B" (HARN).

Headquarters Philippines Constabulary.

CATBALOGAN, *February* 5, '07.

Received of Major J. B. Murphy the sum of P200 in payment of claim of W. C. Mayer against W. W. Harn.

(Signed) C. L. HOOVER.

EXHIBIT "F" (HARN).

Report of Inspection of Funds and Accounts under the Provisions of Executive Orders Nos. 21, 54, *and* 58, *Series of* 1903, *and General Orders No.* 92, *Headquarters Philippines Constabulary, Series of* 1904.

DECEMBER 4TH, 1906.

The Auditor for the Philippine Islands (through the Chief Supply Officer), Manila, P. I.

SIR: I hereby certify, on my official oath, that I have this
174 day inspected the Disbursing account for the month of November, 1906, of 2nd Lieut. L. A. Dowdell Jr., S. O., Constabulary of Samar, and that I have personally verified the true balance of P23531.69, as stated by accountable officer on said account, and found same to be as follows:

Deposited in office safe as per count	P9877.04
Deposited with Treasurer, Manila	12395.20
In transit to ——	
Disbursed since closing of said account	1259.45
Total	P23531.69

Very respectfully,

(Signed) J. B. MURPHY,
Senior Inspector, Constabulary of Samar,
Inspecting Officer.

EXHIBIT "H" (HARN).

Invoiced at Manila, P. I., this — day of Jan. 3, 1907, to Lieut. L. A. Dowdell, Constabulary Supply Officer, Catbalogan, Samar, the sum of Ninety-one hundred seventy-eight pesos and eighty-one centavos, Philippine currency, Public Civil Funds, for which I will account to the Auditor for the Philippine Islands, viz:

	Philippine currency.
For administrative expenses (Dec. funds and subsistence)	P9178.81
Total	P9178.81

Cash

If by check, No. 455571, on Treasurer of the Philippine Islands
Transfer authorized by authority filed with Voucher No. 1, abstract of transfers, July, 1903, account of J. J. Robertson,
175 Paymaster, P. C.

Disbursements authorized by Act 1527.

* * * * * * *

I certify that I have this day of Jan. 3 1907 invoiced to officer or agent above named the Public Civil Funds in amounts as specified.

(Signed) A. H. THOMAS,
Paymaster, Philippine Constabulary, at Manila, P. I.

EXHIBIT "A" (DOWDELL).

Statement of Lieut. Dowdell.

Major MURPHY: State where you were from 5 o'clock Jan. 11th to 9 A. M. Jan. 12th 1907. State clearly.

Lieut. DOWDELL: I was in my office from 5 to 5:30. I left the office at 5:30, for home, stopping in at Lieut. Harn's house where I met Lieut. Harn, Lieut. McIlvaine, Mr. Carrigan, and Sergeant Robinson. I remained there probably twenty minutes. From Lieut. Harn's house I proceeded directly home. Shortly after my arrival home, Lieut. Byers and Lieut. Adams came in. After having supper, Lieut. Byers, Lieut. Adams and myself started in the direction of my office. Lieut. Adams left Lieut. Byers and myself at Major Murphy's house. Lieut. Byers and myself continued our journey to the office, where I turned over to Lieut. Byers some cosmoline oil and ammunition. Lieut. Byers and myself — in the direction of Major Murphy's house. He left me on arrival at said place and entered the house of Major Murphy. I then proceeded on my way homeward, stopping at the house of Lieut. Harn, where I
176 found Lieut. Harn and Lieut. McIlvaine. This was about 8 P. M. Lieut. Harn, Lieut. McIlvaine and myself left the

house of Lieut. Harn shortly after my arrival there. Lieut. Harn proceeded in the direction of the Constabulary headquarters and Lieut. McIlvaine and myself in the direction of my home. Before arriving there, Lieut. McIlvaine left me. I then proceeded home, reaching there about 8:20. I remained at home from that time until about 8 o'clock of the morning of the 12th. After having breakfast with Lieut. Adams at my house, we proceeded to the office, meeting Governor Curry and Major Murphy on the way in front of Major Murphy's quarters. This was about 8:20 A. M. Lieut. Adams left me in front of Major Murphy's house, entering the house of Major Murphy. After talking with Governor Curry and Major Murphy for a few minutes, I left them and went direct to my office, arriving there at about 8:23. I am positive of this, because while talking with Governor Curry and Major Murphy, watches were produced and found to be 8:20 at that time. Upon arrival at my office, I found the Sergeant Major, Corporal Maslog and the Orderly, whose name I do not know, present. I immediately discovered the absence of my safe, #9835, containing my disbursing funds about Nine or Ten thousand pesos and papers in the form of checks and memorandum receipts. I immediately made inquiries from those present, but no information was gained as to the whereabouts of the safe. I immediately left the office and proceeded to the house of Mr. Whittier, where Major Murphy was taking his breakfast. This was about 8:30. I informed Major Murphy of the absence of the safe. Leaving Mr. Whittier's house I went in search of Governor Curry, finding him in the store of Señor Japmines. Calling
177 him outside, I immediately informed him of the loss of the safe. Governor Curry informed me to keep quiet until investigations could be made. Governor Curry and myself went directly to my office. After staying in the office a few minutes, the Governor proceeded to look for Major Murphy. This was about 8:35. From 8:35 until 9:00 I remained in the office.

Examination by Governor CURRY:

Q. State the kind of money—in silver and paper.
A. About six thousand in paper; three or four thousand in silver.
Q. Who knew that money was in the safe besides yourself, the enlisted men and the officers?
A. No one.
Q. Does anyone live with you?
A. Muchacho.
Q. His name?
A. Sixto.

By Major MURPHY:

Q. Did anyone sleep in your house besides yourself and muchacho?
A. A third person—not a man.
Q. Who inspected the funds last?
A. Lieut. Harn.
Q. State when, and the day.

A. About the 1st of Jan.
Q. State who was present at the inspection of the funds.
A. The office force, including those detailed as Clerks. Here I would like to state about the shipment of the funds. Lieut. McIlvaine assisted me in counting the money and the amount was found to be correct as invoiced.
178 Q. What was the name of the woman?
A. I do not know her last name. Her first name is Rufina.

By Mr. HOOVER:

Q. Did you examine the safe when you and Lieut. Byers were up here?
A. I did not.
Q. Did you see it?
A. Yes, sir, I had reason to go to my desk.
Q. At about what hour did you last see the safe?
A. At about 8 o'clock Jan. 11th.

By Governor CURRY:

Q. Have you any information, or heard any, or any suspicions as to the guilty party or parties?
A. I have none.

By Major MURPHY:

Q. Have you any further statement to make?
A. I have none.

EXHIBIT "D" (HARN).

Statement of Lieut. Harn.

Major MURPHY: State where you were from 5 o'clock P. M. Jan. 11th, 1906, to 9 o'clock A. M. Jan. 12th, 1907. State clearly where you were.
Lieut. HARN: At about 4:30 P. M. I was talking to the Governor in his window. About five o'clock I came by Constabulary Headquarters, and from there to Major Murphy's house and met him. After that, I went to my own house, arriving there I should judge at five-thirty P. M. I found Lieut. McIlvaine in the house. We played cards until I should — about 5:45 P. M. We played cards
179 about a quarter of an hour for beer. At about five-forty-five P. M. I left my quarters, leaving Lieut. McIlvaine there. I went towards Lieut. Dowdell's quarters, stopping at the tienda of Aggripina Mendola for about a quarter of an hour. I drank a beer and talked with the lady, leaving there I should judge about six o'clock, and went to Lieut. Dowdell, Lieut. Byers and Lieut. Adams. We sat and talked for probably fifteen minutes, which would make about 6:20 P. M., when we all started to look for Shauger's muchacho, who was to go back with Lieut. Byers. As we started Lieut. Dowdell had forgotten his raincoat, and went back after it. We walked on, and stopped in front of the tienda of Aggripina Mendola, where

Lieut. Dowdell overtook us. From there we came to the house next mine, on the corner where Shauger's muchacho was supposed to be. Lieut. Byers asked for the muchacho, and was informed that he was in Castillo's house, whereupon he returned to Castillo's house to look for the muchacho. (Governor Curry was called away from the meeting.) Lieut. Adams, Lieut. Dowdell and myself proceeded down the street, and waited in front of a store by my house at a distance of about thirty yards, where we stopped and waited for Lieut. Byers. We stayed there probably ten minutes. Lieut. McIlvaine came up, and we stayed there talking. I was talking to the girl in the store, and Lieut. Adams stood by waiting for Lieut. McIlvaine. When Lieut. Byers arrived, he Lieut. Adams, Lieut. Dowdell proceeded to Constabulary headquarters. They went there intending to get some Cosmoline for Lieut. Byers. I proceeded upstairs in my own house. This was abou- 6:40 P. M. Lieut. McIlvaine and I played cards until the return of Lieut. Dowdell, which I should judge was about seven-thirty. In the meantime we sent a muchacho for our
180 dinner to Mr. Scott's house. At approximately eight o'clock we had dinner. Lieut. Dowdell, Lieut. McIlvaine played cards. I sent my larger boy to secure a woman for Lieut. McIlvaine. After dinner I put on my revolver and came down town. At the same time I left, Lieut. Dowdell and Lieut. McIlvaine came down and went in the direction toward Lieut. Dowdell's house. I came down 1st street and went over to the tienda of Leocadia Arteche. I went in the rear room and stayed there about fifteen minutes and drank a beer. This was, I should judge about 8:40 P. M. I left the tienda and came to headquarters. I came upstairs and found the orderly lying in the door. I told him to go to my quarters, secure my bed and take it to the jail as I was Officer of the Day. The Orderly went for my bed. I left headquarters, having been there probably two or three minutes. I proceeded to the tienda of Leocadia Arteche again, where I met Sergeant Robinson of the Signal Corps, U. S. A., and we stayed in the rear room of the tienda and drank one bottle of beer each. We were there probably five or ten minutes, at the end of which time we proceeded to the house of Mr. Hoover, with the intention of playing a game of whist. We found Mr. Hoover, family, and visitors at dinner. We sat down for probably ten or fifteen minutes. It was about nine o'clock when we arrived at Mr. Hoover's. After finishing their dinner, Sergeant Robinson, Mr. Carrigan and I went to the rear of the house to Mr. Carrigan's quarters, where we stayed ten minutes. When we left Mr. Carrigan's quarters we proceeded again to the tienda of Leocadia Arteche. We neglected to go in the rear room. We stayed there for probably fifteen or twenty minutes, when I discovered Major Murphy outside of the
181 tienda. In the meantime, Lieut. Adams and Lieut. Byers had arrived and gone upstairs into the quarters of Lieut. Bactac. Major Murphy called me to come out of the tienda. I left the tienda and proceeded into the street, where Major Murphy stood. The Major ordered me to my quarters. I talked to Major Murphy probably two minutes. At the end of which time he went upstairs in Lieut. Bactac's room. Sergeant Robinson followed me out of the

tienda into the street. Major Murphy came down stairs from Lieut. Bactac's quarters, as I finished talking with Sergeant Robinson. I in company with Major Murphy proceeded to 1st street, where we separated. I went to my quarters and arrived there at ten minutes to ten o'clock by my time. I found Lieut. McIlvaine asleep in quarters. I woke him up, and we both drank a beer. We sat and talked for awhile, after which we retired. I awaoke on the morning of the 12th at about seven o'clock. I took a bath, dressed and sent for breakfast. About seven-forty-five A. M. Lieut. McIlvaine and I proceeded to Sr. Castillo's house, where Lieut. McIlvaine purchased a ticket for Calbayog. We returned to my house. Lieut. McIlvaine packed his basket, took my boy and went to the boat. This was probably eight or eight-ten. On the departure of Lieut. McIlvaine, I proceeded to the office, having been told by Major Murphy the night previous to come to the office in the morning. I saw Governor Curry in the store of Sr. Japmines. I spoke to the Governor, went in and sat down talking with the Governor probably five or ten minutes regarding my troubles of the night previous. Some one called the Governor outside. He excused himself for a moment and left the tienda. I stayed there probably three minutes waiting his return.

182 I looked out and saw Governor Curry go with an officer. I took it to be Lieut. Dowdell. They were coming toward headquarters. I was talking to the girl in the store and said "I guess the Governor was not going to return" or words to that effect. I left the store and proceeded to the office, Senior Inspector, where I was in conversation with Sergeant Robinson (and) Mr. Hoover, when the Major and the Governor passed by. The Major, upon seeing — upstairs, stopped and called me. I immediately came downstairs and reported to the Major. The Major asked me if I knew anything of what had transpired during the night previous. I presume he referred to my indiscretion or the trouble in the tienda and replied, "Yes." The Major informed me of the robbery which had occurred in the building of the headquarters, and ordered me to come to the building and stay here until he returned. I came to the building and found Lieut. Dowdell crying at his desk. I have — here ever since (Governor Curreny returned to the meeting).

Examination by Major MURPHY:

Q. Was there anyone else in the office when you sent the orderly for your bed?

A. I was the only one.

Q. How long did you remain in your office-room?

A. Probably two or three minutes from the time I came upstairs to the time I went down.

Q. State whom you found in your quarters after I ordered you to your quarters in arrest?

A. Lieut. McIlvaine and a woman—I do not know her name.

Q. Do you know her first name?

A. Her first name is Peney.

Q. Who else was there—any muchacho?

183 A. I could not say. I did not go to the muchacho's room. I went to bed.

Q. What is the name of your muchacho?

A. I do not know the last name. I only know the first name. One is Perfecto, another is Vallertine, and the larger one is called Julian.

Q. Did you sleep by yourself?

A. I did.

Q. Did you state you sent your muchacho for a woman for yourself and one for Lieut. McIvaine?

A. No, I stated that I sent for one for Lieut. McIlvaine.

Q. Did you inspect the funds of Lieut. Dowdell?

A. I did.

Q. State the amount you found in the safe, and the kind of money?

A. I cannot do it, Major. I inspected Lieut. Dowdell's accounts, I think about January 5th or 6th, and I do not think I can remember correctly.

Q. About how much money—fifteen or twenty thousand pesos?

A. If I remember rightly, about twenty-two or twenty-three thousand pesos. That is to the best of my knowledge.

Q. In what kind of money?

A. I do not know for sure, probably six or seven thousand in silver, and the rest in checks and paper money.

Q. Who was present at the time you counted the money in Lieut. Dowdell's office?

A. All the office force.

184 Q. Did you and Lieut. McIlvaine sleep in the same room?

A. Yes, sir.

Q. Did you leave the room during the night, or did Lieut. McIlvaine?

A. We left the room. I went to the water-closet, and Lieut. McIlvaine left the room to go to the water —.

Q. Did you see Lieut. McIlvaine leave the room you slept in?

A. I did.

Q. State as near as you can the time Lieut. McIlvaine left the room?

A. Between two and three o'clock.

Q. Was Lieut. McIlvaine dressed?

A. No, sir, he was in his K*amona*.

Q. Did you talk with Lieut. McIlvaine at the time you left the room?

A. We talked a while.

Q. At what time did Lieut. McIlvaine return to the room?

A. He was absent from the room about two or three minutes.

Q. Did yourself, Lieut. McIlvaine and the woman have any conversation in the room?

A. Yes, sir, we talked in the room. I talked to her in Spanish. This was when I came home at ten o'clock.

Q. Did you leave the house after you were placed in arrest?

A. I did not.

Q. Did Lieut. McIlvaine leave the house after you got there?
A. No, sir, not until this morning.
185 Q. Make any statement you wish to make or if you have any suspicions as to who had any connection with the robbery of Lieut. Dowdell's safe.
A. I cannot say that I have any suspicions.
Q. Have you any suspicions now?
A. No, sir.

EXHIBIT "C" (Harn).

Philippines Constabulary.

OFFICE OF THE SUPPLY OFFICER,
CONSTABULARY OF SAMAR,
CATBALOGAN, *Jan. 9th*, 1907.

DEAR OLE: Have not heard from you for a long time. Just a note this. I am about to leave the *Service*. Have been saving and working for six months to this end. Result.—Lt. McIlvaine and I have bought a plantation, hemp. We have borrowed and raked up—— (Unfinished.)

Thereafter, on the 11th day of May, 1907, the trial court rendered the following separate judgments in the said cause:

(Title of Court and Cause.)

The defendant MacIlvaine, together with Louis A. Dowdell Jr. and Wilson W. Harn, are accused of the crime of misappro-
186 priation of public funds, alleged to have been committed in the town of Catbalogan, Samar, on the eleventh day of January, 1907, the said funds being in the custody of Louis A. Dowdell Jr. at that time Supply Officer of the Philippine Constabulary for the Province of Samar. The amount of funds so deposited being nine thousand, nine hundred and seventy-one pesos and twenty-six cents Philippine Currency (P9,971.26) and said act committed in violation of paragraph three (3) of article 390 of the Penal Code.

The court finds from the evidence that the defendant is not guilty as a principal in said crime as charged but that he is guilty as an accessory thereto and sentences him to imprisonment in the provincial prison of the Province of Samar for the period of four months and to pay one-third of the costs.

(Signed) W. F. NORRIS, *Judge*.

Catbalogan, Samar, P. I., May 11, 1907.

(Title of Court and Cause.)

The defendants are charged with misappropriation of public funds in violation of section one of article 390 of the Penal Code. The offense being alleged to have been committed on the eleventh day of January, 1907, in the municipality of Catbalogan, Province of Samar.

The evidence shows that on the eleventh day of January last, the defendant Dowdell was an Inspector and Supply Officer of the Philippine Constabulary stationed at Catbalogan, in the Province of Samar, and as such Supply Officer was in charge of public
187 funds belonging to the Insular Government and that his co-defendants, Harn and McIlvaine were also inspectors of the Philippine Constabulary.

The evidence also shows that, on the night of the eleventh of January last, the safe containing the public funds pertaining to the Constabulary, then in the custody of defendant Dowdell, was taken from its place in the headquarters building of the Constabulary and sunk in the waters of the sea, and that previously during the same day, paper and silver money to the amount of nine thousand, nine hundred and seventy-one pesos and twenty-six cents (P9,971.26) was removed from the safe to the residence of defendant Harn, by the defendants Harn and Dowdell, with the knowledge of Dowdell and by his consent. That said money was concealed by these defendants in the house where Harn was then living; the silver being buried in the vault of the privy and the paper currency placed in a glass jar and deposited above the ceiling of a room therein. That after so taking the money therefrom, the safe was taken from its place in the Constabulary building by the defendants and sank in the bay, as before stated.

The court also finds from the evidence, that on the 13th day of January, 1907, the defendant Dowdell was indebted to the Government in the sum of thirteen thousand, five hundred and twenty-one pesos and forty-four cents and that there was taken from the safe in paper and silver money by the defendants on the eleventh of January, the amount mentioned in the complaint, viz. nine thousand, nine hundred and seventy-one pesos and twenty-six cents.

188 The court further finds that the said money was taken from the safe by defendants Harn and Dowdell for the purpose of appropriating it to their own use, and depriving the Government thereof, and that the safe was taken from the Constabulary building by said defendants and buried in the sea for the purpose of concealing the evidence of their crime.

Counsel for defendants Harn and Dowdell urge that if guilty of the facts as alleged, their act was a violation of article 392 and not of Article 390 of the Penal Code. This position, in the opinion of the court, is utterly untenable. Article 392 applies to misappropriation of public funds, by a public official, where restitution is made, or was intended to be made at the time the act was committed. In the case at bar, there was a recovery but there was no restitution. Nor is there the least scintilla of testimony of any intention to make restitution on the part of the defendants Harn and Dowdell. The confession of McIlvaine led to the recovery of the money and safe, but the other defendants deny their guilt and persist in that denial to the termination of the trial. The confession of MacIlvaine nor the fact that the property was the sooner discovered through that confession does not benefit them. They are guilty as matter of

fact is shown beyond all controversy and that they are guilty under Article 390 of the Penal Code is equally clear as matter of law.

The testimony of MacIlvaine shows that the defendants had been in each other's company for several days, during which time they drank heavily and were under the influence of liquor more or less, though to what extent does not appear from the evidence.
189 From a consideration of the conditions, however, the court extends to defendant Dowdell the benefit of section 6 of article 9 of the Penal Code as an extenuating circumstance.

The court finds the defendant Louis A. Dowdell, Jr. guilty, as charged, of misappropriation of public funds and does sentence him to imprisonment in the Insular Prison of Bilibid for the period of six years and one day, from and including this date, and to pay one-third of the costs of the prosecution.

To all of which the defendant, through his counsel, excepts.

(Signed) W. F. NORRIS, *Judge.*

Catbalogan, Samar, P. I., May 11, 1907.

Filed on May 25, 1907.

L. CINCO,
Clerk of the Court.

(Title of Court and Cause.)

The defendant, Wilson W. Harn, together with Louis A. Dowdell, Jr. and Charles H. McIlvaine are charged with the crime of misappropriation of public funds in violation of Article 390 of the Penal Code, alleged to have been committed on the eleventh of January, 1907, in the town of Catbalogan, Province of Samar.

The prosecution rests principally on the testimony of Major Murphy and the confession of the defendant McIlvaine. The testimony shows that at the date of the alleged offense the defendant Harn was an inspector of constabulary stationed in the town of Catbalogan and the defendant Louis A. Dowdell, Jr. was also an Inspector of Constabulary and Supply Officer for the Province of Samar and in custody of the public funds pertaining to the Constabulary and that the defendant MacIlvaine being tempo-
190 rarily in the town of Catbalogan on leave of absence from his proper station which was Lope de Vega.

Major Murphy testifies that the safe containing the Constabulary funds then in the custody of Dowdell was found to be missing on the morning of the twelfth of January, 1907, and that on the nineteenth of January the safe was found underneath the waters of the bay and that the safe when found contained no money excepting a twenty-five cent piece and ten cents Conant. He also states that he found in the house of the defendant Harn a sum of money in paper and silver amounting to nine thousand, nine hundred and seventy-one and twenty-six hundredths pesos, Philippine currency; that the silver was found in sacks, buried in the privy vault and the paper money in a glass jar which was hidden above the ceiling of the residence of the said defendant. The discovery of the safe and money

was owing to the confession of the defendant MacIlvaine, who made a verbal confession to Col. Bandholtz, then Acting Director of the Constabulary, and a written confession addressed to Major Murphy. The witness MacIlvaine testified in the case under discussion that he spent several days in the house of the Defendant Harn and that he and the other two defendants were together a great part of the time; that some time before the eleventh of January, 1907, occasional remarks were made as to disposing of the safe and its contents, but no overt act took place until the eleventh of January, 1907, when the defendant Dowdell brought a package of paper money, wrapped in a newspaper, to the house of the defendant Harn, and two coal oil cases, partially filled with silver money, were brought to the house in a push cart in charge of the defendant Harn, and that said money was taken from the push cart to the house with the knowl-
191 edge of the defendant Dowdell, who was present at the time the money arrived at the house. The defendant McIlvaine states that he helped to conceal the paper money by putting it in a glass jar which he had purchased to keep candy in and the jar being concealed above the ceiling; and the silver money being buried in the vault of the privy in the house. He also states that after the money was brought to the house the three of them went to the Constabulary Headquarters and removed the safe, the defendant Harn lowering it from the back porch to the ground, where it was received by MacIlvaine and Dowdell, taken out into the bay and sunk.

The testimony of the two witnesses aforesaid is corroborated by the evidence of the men who procured boxes at the instigation of Dowdell and which were taken that night under the custody of defendant Harn to the house of the latter and concealed as aforesaid.

The defense offered no testimony.

It is urged in argument that if the defendants are guilty it is of a violation of article 392 of the Penal Code and not of Article 390. The existing law is minutely codified so as to provide for all principal phases of the offense of misappropriation of public funds by a public officer. Article 392 applies to the cases wherein the public officer without intending to appropriate the money or deprive the government thereof or applies it to his own use, intending such application to be temporary, and restores the same. In this case there was no restitution of the money and no item of the evidence shows an intention of restitution on the part of the defendants Dowdell or Harn. Every act shows the intention was to take the money and to deprive the Government thereof. Men do not bury money
192 that they intend to restore. If restitution was intended there was no necessity for concealing the evidence of their crime by sinking the safe, and if the defendant Harn had intended to restore the money he would not have told the defendant MacIlvaine to take as much of the paper money as he desired. There was a recovery of the money but no restitution, and the recovery of the money was made through the confession of the defendant MacIlvaine. The facts shown in evidence—their burying the silver money, hiding the paper and sinking the safe—tend to show that they pro-

posed to keep the money, such taking and keeping of the money is clearly a violation of Article 390 of the Penal Code.

From a consideration of the foregoing circumstances, the court is of the opinion that the guilt of the defendant, as charged, is proven beyond all controversy. The court therefore finds the defendant Wilson W. Harn guilty of misappropriation of public funds amounting to the sum of nine thousand, nine hundred and seventy-one pesos and twenty-six cents, Philippine currency, in violation of Article 390 of the Penal Code and does sentence him to imprisonment in the Insular Prison of Bilibad for the period of six years and one day and to pay one-third of the cost of the prosecution. To which finding of the court the defendant excepts.

(Signed) W. F. NORRIS, *Judge.*

Catbalogan, Samar, P. I., May 11, 1907.

Indorsed: Filed on May 25, 1907. (Signed) L. Cinco, Clerk of the court.

193 Thereafter, on the same 11th day of May, 1907, counsel for defendant Wilson W. Harn, filed the following notice of appeal to the Supreme Court of the Philippine Islands:

(Title of Court and Cause.)

The defendant Wilson W. Harn, feeling aggrieved at the judgment rendered against him in this cause, on the 10th day of May, 1907, by which he was sentenced to imprisonment in Bilibid for a term of six years and one day and to pay one-third of the costs, prays and appeals to the Supreme Court of the Philippine Islands.

(Signed) J. N. WOLFSON,
" L. M. SOUTHWORTH,
Attorneys for Defendant.
By H. V. BAMBERGER, *Reporter.*

Indorsed: Filed May 11, 1907. (Signed) Lázaro Cinco, Clerk of the Court.

On the same day counsel for defendant Louis A. Dowdell filed similar notice of appeal, as follows:

(Title of Court and Cause.)

The defendant Louis A. Dowdell, Jr., feeling aggrieved at the judgment rendered against him in this cause on the tenth day of May, 1907, by which he was sentenced to imprisonment in Bilibid for a term of six years and one day and to pay one-third of the costs, prays and appeals to the Supreme Court for the Philippine Islands.

(Signed) J. N. WOLFSON,
" L. M. SOUTHWORTH,
Attorneys for Defendants,
By H. V. BAMBERGER, *Reporter.*

194 On the 20th of May, 1907, both defendants Dowdell and Harn filed in the Court of First Instance of Samar an appeal bond in the sum of eight thousand dollars, Philippine currency, each.

Thereafter, the case was duly forwarded by the Clerk of the Court of First Instance of Samar to the Clerk of the Supreme Court of the Philippine Islands, in which latter court it was received and docketed on the 6th of August, 1907.

Thereafter, to-wit, on the 13th of December, 1907, attorneys for defendants and appellants Louis A. Dowdell, Jr. and Wilson W. Harn filed their brief in the Supreme Court of the Philippine Islands, accompanied by the following assignment of errors:

195 *Assignment of Errors.*

Now come the above named defendants and appellants, Louis A. Dowdell, Jr., and Wilson W. Harn, by their attorneys Southworth & Ingersoll, and say that there is manifest error in the records, proceedings and judgments aforesaid in this, to-wit:

I.

The court below erred in trying the defendants and appellants in their absence, in violation of Section 15 of General Order No. 58, and of Section 5 of the Act of Congress of July 1st, 1902, commonly known as the "Philippine Bill," and in violation of Article 6 of the Amendments to the Constitution of the United States.

II.

The court below erred in trying the defendants and appellants and rendering judgments against them without first arraigning said defendants, or either of them, which said failure was in violation of General Order No. 58 of the Act of Congress of July 1st, 1902, commonly known as the "Philippine Bill," and of Article 6 of the Amendments to the Constitution of the United States.

III.

The court below erred in trying the defendants and appellants without first requiring them, or either of them, to plead to the information filed against them and without joinder of issue between the United States and the said defendants and appellants or either of them.

IV.

The court below erred in trying the defendants and appellants and rendering judgments against them, or either of them,
196 upon an information upon which no preliminary investigation had been held by any magistrate, judge, promotor fiscal or his deputy, in violation of General Order No. 58, and of Article 5 of the Amendments to the Constitution of the United States.

V.

The court below erred in trying, convicting and sentencing the defendants and appellants upon an information which was null and void in that no oath or affirmation of probable cause was affixed to said information, in violation of Article 4 of the Amendments to the Constitution of the United States and in violation of Section 5 of the Act of Congress of July 1st, 1902, commonly known as the "Philippine Bill."

VI.

The court below erred in trying, convicting and sentencing the defendants and appellants under the existing provisions of the laws of the Philippine Islands for the issuance of warrants of arrest and for the trial of persons charged with felonies upon informations, to-wit: Sections 3-4-5-6-7 and 8 of General Order No. 58, because said sections are unconstitutional and void in so far as they authorize the prosecution of criminal offenses by information without any provision for an oath or affirmation to said information, being thereby repugnant to Articles 4 and 5 of the Amendments to the Constitution of the United States, and to Section 5 of the Act of Congress of July 1st, 1902, commonly known as the "Philippine Bill."

VII.

The court below erred in trying the defendants and appellants upon an information signed and presented by the promotor
197 fiscal instead of upon a presentment or indictment of a grand jury, in violation of Article 5 of the Amendments to the Constitution of the United States.

VIII.

The court below erred in passing upon the guilt or innocence of the defendants and appellants and convicting them of an infamous crime instead of submitting the question of their guilt or innocence of said crime to a trial by jury, in violation of Sub-Section 3 of Section 2 of Article 3 of the Constitution of the United States.

IX.

The judgment of the court is null and void because it is in violation of Section 5 of the Act of Congress of July 1st, 1902, and of Article 5 of the Amendments to the Constitution of the United States, in that it deprives the defendants and appellants of their liberty without due process of law.

X.

The court below erred in convicting the defendant and appellant Harn upon an information which failed to allege facts sufficient to constitute a charge of malversation of public funds by a public official within the purview of section 390 of the Penal Code.

XI.

The court below erred in convicting the defendant and appellant Harn of misappropriation of public funds in that the evidence failed to show that the said funds were in his possession as a public official.

XII.

198 The court below erred in permitting the witness Berry to testify over the objection of the defendants' counsel as to the contents of certain books and statements of accounts on file in the office of the Insular Auditor, the defendant Dowdell's office and in Constabulary headquarters.

XIII.

The court below erred in rendering its judgments in the absence of the defendants.

XIV.

The court below erred in not sustaining defendants' demurrer to the amended information.

XV.

The judgments of the court below are contrary to the law.

XVI.

The judgments of the court below are contrary to the evidence.

SOUTHWORTH & INGERSOLL,
Attorneys for Defendants and Appellants.

Thereafter, to-wit, on the 11th day of January, 1908, the Attorney-General for the Philippine Islands filed the following motion in the Supreme Court:

(Title of Court and Cause.)

Comes now the Attorney-General of the Philippine Islands and prays this Honorable Court to make an order directing that the record of this cause be returned to the Court of First Instance of the 12th Judicial District for a new trial, for the reason that it does not appear from the record that the defendants pleaded to the complaint filed against them, declaring themselves guilty or not guilty.

199 It appears from the record that on the 31st of January, 1907, there was filed in the office of the Clerk of the Court of First Instance of the 12th Judicial District a complaint against the said defendants for the crime of misappropriation of public funds; that on the same day defendants were arraigned before the Honorable Charles H. Smith, acting judge of the said court, whereupon the complaint was read to them; that after the reading of the complaint to the defendants the trial of the case was continued to the fifth day of the following term of court at the request of the defend-

ants themselves, that is to say, to the fifth day of March, 1907; that on the sixth day of March, 1907, the Honorable W. F. Norris, judge of the said court, rendered a second continuance of the trial of the said cause until the 29th of March, at the request of the defendants; that on the first day of April, 1907, and at the request of the accused, the trial of the said cause was postponed for a third time, until the second day of May, 1907; that on the fourth day of May, 1907, counsel for defendants filed a general demurrer to the complaint, which was overruled by the Court, and the trial of the case was immediately proceeded with, without requiring the defendants to plead guilty or not guilty thereto.

(Signed) GREGORIO ARANETA,
Attorney-General.

Which said motion was denied by the Supreme Court on the same day.

Thereafter, and on the thirteenth of February, 1908, the Attorney-General filed his brief, and on the third day of March, 1908, the case was called for hearing, and no counsel appearing the same
200 was considered as submitted, and taken under advisement.

Thereafter, and on the 20th of March, 1908, the Supreme Court made the following order:

Resolved that the Clerk of the Court of First Instance of Samar be, and he is hereby, directed to send forthwith to this Court a certified copy of all entries in any book in his office referring to the case of The United States versus Louis A. Dowdell and Wilson W. Harn, and particularly of any entry relating to the arraignment of the defendants and to their plea.

He is further directed to at once send to this court a certificate as to whether he was present at the separate trial of each of the defendants, Dowdell and Harn, and if so, whether each or both of them were present at such trial; and the Honorable W. F. Norris, the judge who tried the case, is hereby directed to send to this court a certificate showing whether the defendants and each of them were present during the trial of said cause against Louis A. Dowdell and Wilson W. Harn.

Thereafter, and on the thirtieth of March, 1908, the following letter was received from the Honorable W. F. Norris, Judge of the 9th Judicial District:

ILOILO, *March* 26, 1908.

Clerk of the Supreme Court, Manila, P. I.

SIR: In compliance with the order of the Supreme Court, directing me to certify whether the defendants Louis A. Dowdell and Wilson W. Harn were present in court during the trial entitled—The United States vs. Louis A. Dowdell and Wilson W. Harn, at Catbalogan, during the month of May, 1907, held before me as
201 Judge of the 12th Judicial District. I transmit the statement following:

I certify that each of said defendants, Louis A. Dowdell and Wilson W. Harn, was present in open court, during the entire time of his trial in said case, from the calling of the case till after the

sentence was pronounced. In this connection, I would also state that, as I recollect, a separate trial was granted to each defendant at the request of his counsel. The case first came before Judge Smith, when holding a special term at Catbalogan, who adjourned the hearing till the regular March term for the province. After repeated and urgent requests by mail and telegram from defendants' counsel, I adjourned the trial to May 2d, setting a special term at Catbalogan to hear the case, and going there for that purpose. As to whether there was a formal arraignment of the defendants, that is, whether after the reading of the information to them they were asked to plead, I am unable to state. I do not recollect whether such arraignment was had before myself as Judge, and am ignorant whether defendants were arraigned before Judge Smith before he granted the first continuance of the case. Every opportunity, however, was given both defendants to formally plead, and if such omission, if there were such, was not waived by the continuance of the case at their own request, the objection was not raised in the lower court on motion for a new trial.

Respectfully submitted,

(Signed) W. F. NORRIS,
Judge, 9th Judicial District.

202 Thereafter, and on the sixth of April, 1908, the following letter was received from the Clerk of the Court of First Instance of Samar:

Court of First Instance, Province of Samar.

CATBALOGAN, P. I., *March* 29, 1908.

To the Clerk of the Supreme Court, P. I.

SIR: I have the honor to enclose herewith a certified copy of all entries in my docket referring to the case of The United States versus Louis A. Dowdell and Wilson W. Harn, and particularly of the entries relating to the arraignment of the said defendants. As to whether I was present at the separate trial of each of the said defendants Dowdell and Harn I cannot say, because at the time of the trial of the said cause the clerk of the Court was Mr. Lázaro Cinco, and not I.

As the Honorable Judge Norris has been transferred to another District, I am unable to supply the information required from him.

Respectfully,

(Signed) ALFONSO M. CINCO,
Clerk of Court.

The certificate referred to in the foregoing letter is as follows:

THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the Province of Samar, 12th Judicial District.

Criminal Cause. No. 597.

THE UNITED STATES
vs.
LOUIS A. DOWDELL, JR., WILSON W. HARN, and CHARLES H MACILVAINE.

Crime: Misappropriation of Public Funds.

203 May Third, 1907.

Case called for trial. Appearances: Prosecuting Attorneys, Emilio Araneta and Mr. Adam, and the defendants, the first two, Louis A. Dowdell, Jr., and Wilson W. Harn accompanied by their attorneys L. M. Southworth and J. N. Wolfson, respectively. Defendant Charles H. MacIlvaine having no lawyer, Attorney Ruperto Kapunan was appointed by the Court to defend him. The complaint was then read to the defendants in the Spanish language, and a copy of the same delivered to each of the attorneys. After examining the same, Mr. L. M. Southworth filed a demurrer, on the grounds stated in his oral argument, and asked the court to postpone the trial of this case until tomorrow, in which motion Mr. Kapunan, counsel for MacIlvaine, joined, presenting an argument in support of the demurrer, to which argument the Assistant Attorney-General, Mr. Adam, replied, and the court adjourned.

May Fourth, 1907.

Continuation of the trial. Present: The defendants, accompanied by their respective attorneys, and the counsel for the Government. Mr. L. M. Southworth, counsel for the defendants Louis A. Dowdell, Jr., and Wilson W. Harn, resumed his argument upon the demurrer. The court, after deliberation, overruled the said demurrer, to which ruling counsel for the defendants excepted. The court then adjourned, and the trial of the case was continued to next Monday, at eight A. M.

204 May Sixth, 1907.

Continuation of the trial of this cause. Present: Counsel for the Government, and the defendants accompanied by their respective attorneys. They were asked whether they pleaded guilty or not guilty of the crime with which they were charged in the complaint read to them on the third instant, and they answered that they pleaded not guilty. The case then proceeded to trial with reference

to the defendant MacIlvaine, J. B. Murphy having testified as witness for the Government. During the course of said testimony there was introduced in evidence by the Government a letter, marked Exhibit "A."

Emilio Araneta also testified as a witness, and after his testimony was received, counsel for defendant introduced in evidence Exhibit "B," which is the original complaint. Immediately thereafter, Guillermo Arteche was called as a witness, and counsel for defendant introduced in evidence a subpœna issued to the witness Charles H. MacIlvaine (Exhibit "C"). Then the defendant Charles H. MacIlvaine testified, and immediately thereafter counsel for the defendant rested the case as to the accused MacIlvaine, and the trial was adjourned. The trial of this cause was resumed at two o'clock P. M. Charles H. MacIlvaine was recalled as a witness, and after his testimony had been received counsel for the defendant made his argument, counsel for the prosecution replied thereto, and the trial was suspended.

May Seventh, 1907.

205 Continuation of the trial. Present: Counsel for the Government, and defendants Louis A. Dowdell, Jr., and Wilson W. Harn, accompanied by their attorneys L. M. Southworth and J. N. Wolfson. The trial was proceeded with, and J. B. Murphy was called as a witness for the Government. During the course of his testimony the prosecution introduced in evidence Exhibits "C," "E" and "F," without objection on the part of the defense, and the trial was adjourned. Hearing resumed at two o'clock P. M. Juan Sulse, L. W. Berry and Ignacio Dilao were called as witnesses for the prosecution, and after their testimony had been received the court adjourned.

May Eighth, 1907.

Continuation of the trial. Present: Counsel for the Government, and the defendants Louis A. Dowdell, Jr., and Wilson W. Harn, accompanied by their attorneys. The case was proceeded with. The witness Ignacio Dilao was recalled. The other witnesses for the prosecution, Canuto Jamias, Juan Belgar and Bonifacio Clark gave their testimony, and the trial was suspended. Hearing resumed at two-thirty P. M. The witnesses for the prosecution, Julian Casimiro and Emigdio Paganos, Luciano Chaves, Maximo Baui and Gregorio Funceras, were examined, and the trial was suspended.

May Ninth, 1907.

Continuation of the trial. Present: Counsel for the Government, and the defendants Louis A. Dowdell, Jr., and Wilson W. Harn, accompanied by their attorneys. The trial was resumed, Charles H. MacIlvaine testifying as a witness for the prosecution. The court then adjourned.

206 May Tenth, 1907.

Continuation of the trial. Present: Counsel for the Government, and the defendants accompanied by their respective attorneys. Both the prosecution and the defense informed the court that they rested their case as to the defendant Wilson W. Harn. The prosecution made its argument, and counsel for the defendants, L. M. Southworth and J. N. Wolfson, replied thereto; Assistant Attorney-General Adam closing the argument. The court thereupon rendered its judgment with reference to the Defendant Wilson W. Harn. The trial of the case was immediately proceeded with as to the defendant Louis A. Dowdell. Mr. John B. Murphy testified, and the trial was suepended. The hearing of the case having been suspended at two o'clock in the afternoon, Charles H. MacIlvaine, Ignacio Dilao and Sixto Vista testified as witnesses. Counsel then informed the court that they rested the case as to the accused Louis A. Dowdell. Attorney Southworth for the defense made his argument, whereupon the court rendered judgment as follows:

Decision.

The defendants are charged with misappropriation of public funds, in violation of section one of art. 390 of the Penal Code. The offense being alleged to have been committed on the eleventh day of January, 1907, in the municipality of Catbalogan, Samar.

The evidence shows that on the eleventh day of January last the defendant Dowdell was an Inspector and Supply Officer of the Philippine Constabulary stationed at Catbalogan, in the province of Samar, and as such Supply Officer was in charge of public funds belonging to the Insular Government, and that his co-defendants,
Harn and MacIlvaine, were also Inspectors of the Philip-
207 pine Constabulary.

The evidence shows also that on the night of the eleventh of January last the safe containing the public funds *containing* to the Constabulary, then, in the custody of defendant Dowdell, was taken from its place in the headquarters building of the Constabulary, and sunk in the waters of the sea, and that previously during the same day, paper and silver money to the amount of nine thousand nine hundred and seventy-one pesos and twenty-six cents (P9971.26) was removed from the safe *of* the residence of defendant Harn, by the defendants Harn and Dowdell, with the knowledge of Dowdell and by his co*u*nsent, that said money was concealed by these defendants in the house where Harn was then living; the silver being buried in the vault of the privy, and the paper currency placed in a glass jar and deposited above the ceiling of a room therein. That after so taking the money therefrom the safe was taken from its place in the Constabulary building by the defendants and s*a*nk in the Bay, as before stated.

The court also finds from the evidence, that on the 13th day of January, 1907, the defendant Dowdell was indebted to the Government in the sum of thirteen thousand, five hundred and twenty-one

pesos and forty-four cents, and that there was taken from the safe in paper and silver money by the defendants on the eleventh of January the amount mentioned in the complaint, viz., nine thousand nine hundred and seventy-one*m* pesos and twenty-six cents.

The court further finds that the said money was taken from the safe by defendants Harn and Dowdell for the purpose of ap-
208 propriating it to their own use, and depriving the Government thereof, and that the safe was taken from the Constabulary building by said defendants and buried in the sea, for the purpose of concealing the evidence of their crime.

Counsel for defendants Harn and Dowdell urge that if guilty of the facts as alleged, their act was a violation of Article 392 and not of Article 390 of the Penal Code. This position, in the opinion of the court, is utterly untenable. Art. 392 applies to misappropriation of public funds, by a public official, where *in*stitution is made or was intended to be made at the time the act was committed. In the case at bar, there was a recovery but there was no *in*stitution. Nor is there the least scintilla of testimony of any intention to make *in*stitution *and a* part of the defendants Harn and Dowdell. The confession of MacIlvaine lead to the recovery of the money and safe, but the other defendants deny their guilt and persist in that denial to the termination of the trial. The confession of MacIlvaine nor the fact that the property was the sooner discovered through that confession does not benefit them. That they are guilty as matter of fact is shown beyond all controversy, and that they are guilty under Article 390 of the Penal Code is equally clear as matter of law.

The testimony of MacIlvaine shows that the defendants had been in each other's company for several days, during which time they drank heavily and were under the influence of liquor more or less, through to what extent does not appear from the evidence from a consideration of the condition, however, the court extends to defendants Dowdell the benefit of section 6 of Article 9 of the Penal Code as an extenuating circumstance.

The court finds the defendant Louis A. Dowdell Jr., guilty
209 as charged, of misappropriation of public funds and does now sentence him to imprisonment in the Insular prison of Bilibid for the period of six years and one day, from and including this date and to pay one-third of the costs of the prosecution.

To all of which the defendant, through his counsel, excepts.

W. J. NORRIS.

Catbalogan, Samar, P. I., May 11, 1907.

Decision.

W. W. HARN.

The defendants, Wilson W. Harn, together with Louis A. Dowdell, Jr., and Charles H. MacIlvaine, are charged with the crime of misappropriation of public funds, in violation of Article 390 of the Penal Code, alleged to have been committed on the eleventh of January, 1907, in the town of Catbalogan, Province of Samar.

The prosecution rests principally on the testimony of Major Murphy and the confession of the defendant MacIlvaine. The testimony shows that at the date of the alleged offense the defendant Harn was an Inspector of Constabulary stationed in the town of Catbalogan, and the defendant Louis A. Dowdell was also an Inspector and Supply Officer for the Province of Samar and in custody of the public funds pertaining to the Constabulary, and that the defendant MacIlvaine *being* temporarily in the town of Catbalogan on leave of absence from his proper station *with* was Lope de Vega.

Major Murphy testifies that the safe containing the Constabulary funds then in the custody of Dowdell was found to be missing on the morning of the twelfth of January, 1907, and on nineteenth
210 of January the safe was found underneath the waters of the Bay and that the safe when found contained no money excepting a twenty-five cent piece and ten cents piece and ten cents Conant. He also states that he found in the house of the defendant Harn a sum of money in paper and silver amounting to nine thousand nine hundred and seventy-one and twenty-six hundredths pesos Philippine Currency; that the silver was found in sacks, buried in the privy vault, and the paper money in a glass jar which was hidden above the ceiling of the residence of the said defendant. The discovery of the safe and money was owing to the confession of the defendant MacIlvaine, who made a verbal confession to Col. Bandholtz, then Acting Director of the Constabulary, and a written —, addressed to Major Murphy. The witness MacIlvaine testified in the case under discussion that he spent several days in the house of the defendant Harn and he and the others two defendants were together a great part of the time; that some time before the eleventh of January, 1907, occasional remarks were made as to disposing of the safe and its contents, but no overt act took place until the eleventh of January, 1907, when the defendant Dowdell brought a package of paper money, wrapped in a newspaper, to the house of the defendant Harn, and two coal oil cases, partially filled with silver money, *was* brought to the house in a push cart in charge of the defendant Harn, and that said money was taken from the push cart to the house, with the knowledge of the defendant Dowdell, who was present at the time the money arrived at the house. The defendant MacIlvaine states that he helped to conceal the paper money by putting it in a glass jar, which he had purchased to keep
211 candy in, and the jar being concealed above the ceiling; and the silver money being buried in the vault of the privy in the house. He also states that after the money was brought to the house the three of them went to the Constabulary headquarters and removed the safe, the defendant Harn lowering it from the back porch to the ground, where it was received by MacIlvaine, and by him and Dowdell tak*ing* out into the bay and sunk.

The testimony of the two witnesses aforesaid is corroborated by the evidence of the men who procured boxes at the instigation of Dowdell and which were taken that night under the custody of defendant Harn to the house of the latter and concealed as aforesaid.

The defense offered no testimony.

It is urged in argument that if the defendants are guilty it is of a

violation of Article 392 of the Penal Code and not of Article 390. The existing law is minutely codified, so as to provide for all principal phases of the offense of the misappropriation of public funds by a public officer. Article 392 applies to the cases wherein the public officer without intending to appropriate the money or deprive the Government thereof *or* applies it to his own use, intending such application — be temporary, and restores the same. In this case there was no restitution of the money, and no item of the evidence shows an intention of the restitution on the part of the defendants Dowdell or Harn. Every act shows the intention as to take the money and to deprive the Government thereof. Men do not bury money that they intend to restore. If restitution was intended, there was no necessity for concealing the evidence of their crime by sinking the safe, and if the defendant Harn had
212 intended to restore the money he would not have told the defendant MacIlvaine to take as much of the paper money as he desired. There was a recovery of the money *was* made through the confession of the defendant MacIlvaine. The facts shown in evidence, their bur-ing the silver money, hiding the paper and sinking the safe tend to show that they proposed to keep the money, such taking and keeping of the money *if* clearly a violation of Article 390 of the Penal Code.

From a consideration of the foregoing circumstances, the court is of the opinion that the guilt of the defendant, as charged, is proven beyond all controversy. The court therefore finds the defendant Wilson W. Harn guilty of misappropriation of public funds amounting to the sum of nine thousand, nine hundred and seventy-one pesos and twenty-six cents, Philippine currency, in violation of Article 390 of the Penal Code, and does sentence him to imprisonment in the Insular Prison of Bilibid for the period of six years and one day and to pay one-third of the costs of the prosecution. To which finding of the court the defendant excepts.

W. J. NORRIS, *Judge.*

Catbalogan, Samar, P. I., May 11, 1907.

MAY ELEVENTH, 1908.

This case was called for judgment as to defendant MacIlvaine. The parties being present, the court after considering the evidence of record rendered the following judgment:

The defendant McIlvaine, together with Louis A. Dowdell, Jr. and Wilson W. Harn are accused of the crime of misappro-
213 priation of public funds, alleged to have been committed in the town of Catbalogan, Samar, on the eleventh day of January, 1907, the said funds being in the custody of Louis A. Dowdell at that time Supply Officer of the Philippine Constabulary for the Province of Samar. The amount of funds so deposited being nine thousand nine hundred and seventy-one pesos and twenty-six cents Philippine currency (P9971.26) and said act committed in violation of paragraph three (3) of Article 390 of the Penal Code.

The court finds from the evidence that the defendant is not guilty as a principal in said crime as charged, but that he is guilty

as an accessory thereto, and sentences him to imprisonment in the provincial prison of the province of Samar for the period of four months and to pay one-third of the costs

W. J. NORRIS, *Judge.*

Catbalogan, Samar, P. I., May 11, 1907.

True copy, to which I certify.

(Signed) ALFONSO M. CINCO,
Clerk of the Court of First Instance of Samar.

Thereafter, and on the ninth of April, 1908, the following letter was received from the Honorable James Ross, judge of the twelfth judicial district:

Court of First Instance, Province of Leyte.

TACLOBAN, *April 3d,* 1908.

SIR: I have the honor to hand you herewith a certificate of certain proceedings had in case numbered 597, Samar, entitled
214 The United States vs. Louis A. Dowdell Jr. et al.

Very respectfully,

(Signed) JAMES ROSS,
Judge 12th Judicial District.

To the Clerk of the Supreme Court, Manila, P. I.

The certificate referred to in the foregoing letter is as follows:

I, H. V. Bamberger, Court Reporter, Twelfth Judicial District, do hereby certify that my notes of proceedings in the case of the United States against Louis A. Dowdell, Jr., Wilson W. Harn and Charles E. McIlvaine, being case numbered 597 of the province of Samar, show:

That on May sixth, 1907, the defendants were arraigned, waived reading of the complaint and pleaded not guilty.

(Signed) H. V. BAMBERGER,
Court Reporter, 12th Judicial District.

I, James Ross, Judge of the Twelfth Judicial District (Provinces of Samar and Leyte) do hereby certify that H. V. Bamberger is the duly appointed, qualified and acting reporter of the said district.

(Signed) JAMES ROSS,
Judge 12th Judicial District.

Thereafter, and on the tenth of July, 1908, the Attorney-General filed in the Supreme Court of the Philippine Islands a supplemental brief in the above entitled cause.

215 On the 18th of July, 1908, the Supreme Court of the Philippine Islands rendered the following decision:

(Title of Court and Cause.)

TRACEY, *J.*:

This is an appeal from a conviction for malversation of public moneys. The accused were all officers of the Philippine Constabulary, Dowdell having been Supply Officer for the province of Samar and Harn his subordinate, while McIlvaine was a friend visiting Harn during the occurrence in question.

On January 12th, 1907, Dowdell, who had been relieved of his charge and ordered to turn over the property in his hands to his successor, announced to Major Murphy, the Senior Inspector of Constabulary for Samar, that the safe had disappeared from his office, containing some 6,000 pesos in paper and three or four thousand in coin. Some days later, at the instance of McIlvaine, the safe was fished out of the bay, containing only two coins of the value of 40 centavos; but the sum of 9,971 pesos and 26 centavos, in paper and silver, was found hidden in various places on the premises occupied by Harn and was turned over to the Government.

After separate trials the accused were found guilty and the two supply officers were sentenced to terms of imprisonment of six years and one day, and their visitor, as an accomplice to imprisonment for four months, each of them to pay one-third of the costs.

From the testimony of McIlvaine it appears that during the week preceding January 12th, the three men had been shooting and drinking together, consuming a great quantity of beer, but it is apparent that at the time of the taking of the money they all were clear-headed enough to know what they were about and to follow
216 out a concerted and intelligent plan of operations. During the early period of their convivialities it was suggested by Dowdell that it would be well if his "safe and accounts were in the bay." On the next day, when he appeared, he brought with him a bundle of bank bills wrapped in a newspaper, but the following day returned them to the office. On the succeeding day, however, the silver was brought to Harn's house, boxed in two oil cases, and the paper money appears to have been carried back again to the house by Dowdell that same evening. After dinner, at about eight o'clock, the three men proceeded to the Constabulary, where Harn left Dowdell and McIlvaine, who together lowered the safe into a *barrota* in which it was taken out into the bay and there thrown into the water.

In an elaborate brief, the counsel for the defense attacked the procedure in the Court of First Instance, chiefly on the points that the record failed to disclose that the accused had been present throughout the trial or that they had ever been arraigned, or had pleaded; and at one stage of the case in this Court the Attorney-General made a motion, which was denied, that the case be remanded to the Court of First Instance for a new trial on account of these defects thus disclosed. Upon an examination of the papers before us, after final argument, this Court required a return by the Clerk of the Court of First Instance, in full, of the proceedings in the court below, from which it now fully appears by entries in the minutes that each of the defendants was present throughout his trial and that they were

all arraigned and pleaded not guilty. It is unnecessary, therefore, to consider the constitutional questions discussed in the briefs, based on the omissions from the imperfect record.

217 It is contended that the malversation in this case is qualified by the fact that the moneys taken were recovered by the Government. This incident is of no practical importance, for two reasons, first, the money was not returned or made good by the accused, so as to entitle them to the benefits of the provisions of Article 392 of the Penal Code, had that article been properly applicable, but was, on the contrary, recovered by the Government through its own efforts and in spite of their endeavor to the contrary, and, second, because their offense does not fall under the said Article 392, as appropriation to their own use of public moneys which they were able to make good, but rather under Article 390 of the Penal Code, as appropriation of public moneys to their own use with the intent of keeping it. The distinction between these two offenses, resting in the intention of the official to restore or not to restore the money, is clearly pointed out in the case of the United States versus Coates, 4 Phil. Reps. 581. Every fact in the present case points to the deliberate and permanent misappropriation of the fund.

In sentencing the two principal offenders, the trial judge took their drunkenness into consideration as an extenuating circumstance. The facts above recited, as we read them in the record, did not justify him in doing so. There was no such drunkenness as decreases their responsibility for their acts.

On the other hand, the Attorney-General asks for an increase of the penalty on the ground that the offense was committed by night. It is impossible to accede to this request, as, although the safe was disposed of after nightfall the moneys the taking of which

218 constitutes the statutory offense, were withdrawn from the treasury during daylight.

Our conclusion is that the defendants Dowdell and Harn, who alone have appealed, are guilty of malversation of public funds under Article 390 of the Penal Code, without any extenuating or aggravating circumstance. The penalty imposed is that of *presidio mayor,* in its medium degree, with imprisonment for eight years and one day, one-half of the costs in this instance to be paid by each of the appellants, the judgment of the court below in other respects being affirmed.

Arellano, C. J., Torres, Mapa, Carson & Willard, JJ., concurring.

On the 27th of July, 1908, counsel for defendants filed the following exception:

(Title of Court and Cause.)

Come now the defendants in the above entitled cause and hereby except to the decision of this Honorable Court rendered in said cause.

(Signed) SOUTHWORTH & INGERSOLL.

On the same day the following motion for a new trial was made by attorneys for defendants:

Motion for New Trial.

Come now the above named defendants and move this Honorable Court to grant a new trial in the above entitled cause on the following grounds, to-wit:

1. The Court erred in overruling the defendants' exception to the judgments of the Court below.

2. The Court erred in taking the testimony of the witnesses Norris, Bamberger and Cinco without any suggestion on behalf of either party that there was any diminution in the record, as it came from the Court below, and for the further reason that said testimony was taken in the absence of the defendants, with no opportunity
219 afforded them of cross-examining said witness or introducing rebutting evidence; all in violation of the defendants' constitutional rights, "to be confronted by the witnesses against them."

3. The court erred in considering the testimony of the witnesses Norris, Bamberger and Cinco because the statements of said witnesses were not certified copies of any record in the case, were not sworn to and had no seal of the Court affixed.

4. That the judgment is contrary to the law.

5. Because the judgment is contrary to the evidence.

(Signed) SOUTHWORTH & INGERSOLL,
Attorneys for the Defendants.

On the 28th day of July, 1908, the Supreme Court overruled motion of counsel for a new trial, and on the thirty-first of July final judgment was entered as follows:

THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

July 31, 1908. Docket No. 4191.

THE UNITED STATES, Plaintiff and Appellee,
versus
LOUIS A. DOWDELL and WILSON W. HARN, Defendants and Appellants.

This court having regularly acquired jurisdiction to try the above entitled cause which was submitted by both parties for decision, after consideration by the Court of the record and proceedings, its decision and order for judgment having been filed on the 18th day of July, 1908;

It is hereby ordered that the judgment of the Court of
220 First Instance of the Province of Samar, dated May 11, 1907, be and the same is hereby modified, and the defendants Louis A. Dowdell, Jr., and Wilson W. Harn, are each sentenced to

eight years and one day of *presidio mayor*, with the costs of this instance to be paid by each of the appellants, amounting to twenty-five dollars, Philippine currency, and to the collection of which the Court of First Instance will proceed in accordance with law, the judgment of the court below in other words being affirmed.

It is further ordered that the said cause be returned to the trial court for proper action.

(Signed) J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

[COURT SEAL.]

Thereafter, and on the fourth of August, attorneys for defendants filed the following petition in the Supreme Court:

(Title of Court and Cause.)

Comes now the defendant and appellant Wilson W. Harn by his attorneys Southworth & Ingersoll and shows to the Court:

That on July 27, 1908, this Honorable Court made an order committing your petitioner, the said Wilson W. Harn, to Bilibid Prison for the reason that his bondsmen had surrendered him into court and desired to be relieved from further liability on said bond.

That your petitioner is now actually detained and deprived of his liberty in said Bilibid Prison.

That your petitioner expects without delay to present to this Honorable Court an application for a Writ of Error to the Supreme Court of the United States and that the execution of the
221 judgment be suspended pending the determination of said writ of error, upon the said defendant furnishing a supersedeas bond.

That your petitioner by reason of his confinement is unable to arrange for said writ of error and for the furnishing of said supersedeas bond.

Wherefore, your petitioner prays that upon furnishing a temporary bond for the purpose he may be released temporarily from confinement and for a reasonable length of time until he can prepare said writ of error and furnish said supersedeas bond and that this Court fix the amount of said temporary bond and its duration.

(Signed) SOUTHWORTH & INGERSOLL,
Attorneys for Petitioner.

On the fifth day of August the Supreme Court granted the foregoing petition, and fixed the amount of the bail to be given by defendant Wilson W. Harn at eight thousand dollars, Philippine currency, the bond required was duly filed on the same day, and defendant forthwith released from confinement.

On the tenth of August counsel for defendants excepted to the order of the Court denying their motion for a new trial and to the final judgment entered on the 31st of July, 1908.

On the twelfth of August attorneys for defendants filed the following petition for a writ of error:

Petition for Writ of Error.

Come now Louis A. Dowdell, Jr., and Wilson W. Harn, defendants and appellants in the above entitled cause, and represent that judgment has been rendered in said cause, by which the
222 judgments of the Court of First Instance of the Province of Samar, convicting the petitioners Louis A. Dowdell, Jr., and Wilson W. Harn of the offense of "Malversation of Public Funds" have been modified and affirmed, and judgment entered against Louis A. Dowdell, Jr., and Wilson W. Harn, defendants and appellants, sentencing them to imprisonment of eight years and one day each in Bilibid, in violation of General Order No. 58, and of the act of Congress of July the first, 1902, commonly known as the Philippine Bill, and of the Constitution of the United States and certain amendments thereto, as appears from the accompanying assignment of errors.

Wherefore petitioners pray that they be granted a writ of error from the Supreme Court of the United States to the Supreme Court of the Philippine Islands, with a supersedeas of judgment; and that upon the execution and approval of bonds for each of said defendants and appellants in such sums as may be deemed sufficient, conditioned as required by law, they be admitted to bail pending such writ of error, in order that the judgment may be revised by the Supreme Court of the United States upon the assignment of errors presented with this petition.

They also pray that the record of the cause be ordered translated from Spanish into English in conformity with the rule prescribed by the Supreme Court of the United States.

(Signed) SOUTHWORTH & INGERSOLL,
Attorneys for Defendants and Appellants.

Which said petition was accompanied by the following assignment of errors:

(Title of Court and Cause.)

223 Now comes the above named defendants and appellants, Louis A. Dowdell, Jr., and Wilson W. Harn, by their attorneys Southworth and Ingersoll, and say that there is manifest error in the records, proceedings and judgment in this, to-wit:

I.

The Court erred in reopening the case, after it had been argued on both sides and submitted for final decision, and taking new and additional testimony on its own motion.

II.

The Court erred in taking, admitting, and considering the testimony or statement of the Judge of the Court of First Instance of

the Province of Samar, Honorable W. F. Norris, because the same was taken without the knowledge or consent of the appellants or either of them, was not sworn to, and appellants were not given an opportunity to meet said witness face to face or to be confronted by said witness at the time said testimony was taken or said statement was made; all in violation of article 6 of the Constitution of the United States and section 5 of the Act of Congress of July 1, 1902, commonly known as the Philippine Bill.

III.

The Court erred in taking, admitting and considering the testimony or written statement of the Clerk Cinco of the Court of First Instance of Samar in regard to what appeared in the minutes of the Court of First Instance of said province, because said testimony or statement was not taken in the presence of the appellants or either of them, and the appellants, nor either of them, had no opportunity to meet said witness face to face and cross-examine said wit-
224 ness while he was giving the testimony or making the statement aforesaid, and because said statement of said Cinco is not a certified copy of the minutes or any part of the minutes of the Court of First Instance of the province of Samar, and said statement is not sworn to and has no seal of said Court attached to the same.

IV.

The Court erred in modifying and affirming the judgment of the Court below, because the defendants and appellants were tried in the Court below during their absence, in violation of Section 15 of General Order No. 58, and of Section 5 of Act of Congress of July 1, 1902, commonly known as the Philippine Bill, and in violation of Article 6 of the amendments to the Constitution of the United States.

V.

The Court erred in modifying and affirming the judgment of the Court below in this case, because said defendants and appellants were tried in the court below without being arraigned and given no opportunity to plead to the complaint in said cause, which said failure was in violation of General Order No. 58, Section 5 of the Act of Congress of July 1, 1902, commonly known as the Philippine Bill, and of Article 6 of the amendments to the Constitution of the United States.

VI.

The Court erred in modifying and affirming the judgment of the Court below and in entering a judgment against the defendants and appellants, because said defendants and appellants had never been given an opportunity to plead to said complaint and no issue had ever been joined between the United States and the defendants and appellants.

225

VII.

The Court erred in modifying and affirming the judgment of the Court below, and in rendering a judgment against the defendants and appellants or either of them, upon an information upon which no preliminary examination had been held by any magistrate, Judge, Promotor Fiscal or his deputy, in violation of General Order No. 58, and of articles 5 and 6 of the amendments to the Constitution of the United States.

VIII.

The Court erred in modifying and affirming the judgment of the Court below and in entering a judgment against the defendants and appellants under the existing provisions of the laws of the Philippine Islands for the issuance of warrants of arrest and for the trial of persons charged with felonies upon information, to-wit: sections 3, 4, 5, 6, 7 and 8 of General Order No. 58; because said sections are unconstitutional and void, in so far as they authorize the prosecution of criminal offenses without any provision for an oath or affirmation to said information, being thereby repugnant to section 5 of the Act of Congress of July 1, 1902, commonly known as the Philippine Bill.

IX.

The Court erred in modifying and affirming the judgment of the Court below and in entering a judgment against the defendants and appellants, because said defendants and appellants were tried and convicted in the Court below upon an information signed and presented by the Promotor Fiscal, instead of upon a presentment or indictment of a Grand Jury, in violation of Article 5 of the
226 amendments to the Constitution of the United States.

X.

The Court erred in modifying and affirming the judgment of the Court below and in entering a judgment against the defendants and appellants, convicting them of an infamous crime, instead of submitting the question of their guilt or innocence of said crime to a trial by jury, in violation of sub-section 3 of section 2 of article 3 of the Constitution of the United States.

XI.

The Court erred in modifying and affirming the judgment of the Court below and entering a judgment against the defendants and appellants, because said judgment of the Court below and the judgment of this Court are null and void, because each of said judgments is in violation of section 5 of the Act of Congress of July 1, 1902, commonly known as the Philippine Bill and of article 5 of the amendments to the Constitution of the United States, and in violation of General Order No. 58, in that the judgment of the Court deprives the defendants and appellants of their liberty without due process of law.

XII.

The Court erred in overruling the motion of the defendants and appellants for a new trial, and in modifying and affirming the judgment of the Court below, and in entering a judgment against the defendants and appellants.

XIII.

The Court erred in rendering a judgment against the defendants and appellants which is contrary to the law and the evidence.

(Signed) SOUTHWORTH & INGERSOLL,
Attorneys for Defendants and Appellants.

227 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

I, J. E. Blanco, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing two hundred and twenty-six pages of typewritten matter constitute a true and correct transcript of the record and proceedings in Case No. 4191 of said Court, entitled "The United States, plaintiff and appellee, versus Louis A. Dowdell, Jr., and Wilson W. Harn, defendants and appellants; and in obedience to the writ of error therein allowed I hereby transmit the same to the Supreme Court of the United States of America, this first day of December, nineteen hundred and eight.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,
Clerk Supreme Court of the Philippine Islands.

228 [Stamped:] Clerk's Office Supreme Court of the Philippines. Filed Aug. 12, 1908, — M.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable Judges of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment in a cause which is in the said Court before you, or some of you, between the United States, Plaintiff and Appellee, and Louis A. Dowdell, Jr., and Wilson W. Harn, Defendants and Appellants, a manifest error hath happened to the great damage of said Louis A. Dowdell, Jr., and Wilson W. Harn, as is said and appears in their petition for a writ of error, we, being willing that such error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that the-, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this Writ, so that you may have the same at

Washington, on the 5th day of December next, in the Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 12th day of August in the year of A. D. 1908 and of the Independence of the United States the 133rd.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

229 The foregoing writ is allowed and upon the filing in the Office of the Clerk of this Court by said plaintiffs in error, Louis A. Dowdell, Jr. and Wilson W. Harn, of bonds in the sum of Sixteen thousand pesos, each, Philippine currency, approved by me, it is ordered that said writ of error shall operate as a supersedeas and stay of execution.

Dated Manila, P. I., August 12th, 1908.

JAMES F. TRACEY,
Associate Justice of the Supreme Court of the Philippine Islands.

[Stamped:] Clerk's Office Supreme Court of the Philippines. Filed. Aug. 12, 1908,—M.

230 Know all men by these presents: That, whereas, Wilson W. Harn has been granted a writ of error to the Supreme Court of the United States in Cause No. 4191 of the Supreme Court of the Philippine Islands, entitled United States of America versus Louis A. Dowdell, Jr., Wilson W. Harn and Charles H. MacIlvaine, to reverse the judgement of the said Supreme Court of the Philippine Islands against said Wilson W. Harn;

And, whereas, a stay of execution of the judgment of said Supreme Court of the Philippine Islands has been granted pending the determination of said writ of error in the Supreme Court of the United States upon the filing by the said Wilson W. Harn of a good and sufficient supersedeas bond in the sum of sixteen thousand (P16,000.00) pesos, Philippine currency;

Now, therefore, we, Wilson W. Harn, as principal, and P. D. Colvert of Manila; Enrique S. Rodriguez, of Cavite, Cavite Province; Zacharias Fortich, of Cavite, Cavite Province; Peter M. A. Johnson, of Cavite, Cavite Province, and Yuen Che Hin, of Manila, as sureties, jointly and severally undertake that the above named Wilson W. Harn will prosecute said writ of error to effect; will surrender himself in execution of such judgment as the said Supreme Court of the United States may render upon the hearing of said writ; in case said cause is remanded for a new trial he will appear in the court to which it may be remanded and submit himself to the orders and process thereof, and generally that he will hold himself amenable

to the orders and process of any and all courts having juris-
231 diction of his said cause; or if he fails to perform any of these conditions that he will pay to the United States of America the sum of sixteen thousand (P16,000.00) pesos Philippine Currency.

(Signed) W. W. HARN.
(Signed) P. D. COLBERT.
(Signed) E. S. RODRIGUEZ.
(Signed) ZACHARIAS FORTICH.
(Signed) PETER M. A. JOHNSON.
(Signed) YUEN CHE HIN.

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

On this 29th day of October, 1908, before me, the undersigned authority, personally appeared P. D. Colbert with Cedula No. H2710, issued in Manila on July 11, 1908; Enrique S. Rodriguez with Cedula No. A238255, issued at Cavite, Cavite Province, on April 23, 1908; Zacharias Fortich with Cedula No. A108821, issued at Cavite, Cavite Province, on Jany. 24, 1908; Peter M. A. Johnson with Cedula No. A112012, issued at Cavite, Cavite Province, on March 20, 1908; and Yuen Che Hin with Cedula No. F1295731, issued at Manila on Jany. 13, 1908.

And each of said persons in my presence signed and acknowledged the foregoing obligation, declaring at the same time that he did so as an act of his own free will and deed, for the uses and purposes therein mentioned.

In testimony whereof I sign and seal these presents.

[SEAL.] (Signed) J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands, ex-Officio Notary Public.

232 UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

We, P. D. Colbert, Enrique S. Rodriguez, Zacharias Fortich, Peter M. A. Johnson and Yuen Che Hin, having been duly sworn, each for himself and not the one for the other, declares upon his oath that he is a resident of the Philippine Islands and that he is solvent in the amount set opposite his name below over and above all just debts and obligation- and property exempt from execution, to-wot:

(Signed)	P. D. COLBERT.	P4,000.
"	E. S. RODRIGUEZ.	P2,000.
"	ZACHARIAS FORTICH.	P2,000.
"	PETER M. A. JOHNSON.	4,000 pesos.
"	YUEN CHE HIN.	4,000 pesos.

Subscribed and sworn to before me the 29th day of October, 1908, by the above named.

[SEAL.] (Signed) J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands, ex-Officio Notary Public.

Approved:
(Signed) JAMES F. TRACEY,
Associate Justice Supreme Court of the Philippine Islands.

Certified:
[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,
Clerk Supreme Court P. I.

233 The United States of America to the Attorney-General of the Philippine Islands, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the city of Washington, within one hundred and twenty days from the date of this citation, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the Philippine Islands, on the 12th day of August, 1908, in a cause wherein Louis A. Dowdell Jr., and Wilson W. Harn, are plaintiffs in error, and the United States of America is defendant in error, to show cause, if any there be, why the *the* judgment in said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 12th day of August, 1908.

JAMES F. TRACEY,
Associate Justice Supreme Court of the Philippine Islands.

Receipt of the above citation is hereby admitted and service thereof accepted this 12 day of Aug't, 1908.

IGNACIO VILLAMOR,
Attorney Gen'l.

234 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

No. 4191.

LOUIS A. DOWDELL, JR., and WILSON W. HARN, Plaintiffs in Error,
versus
THE UNITED STATES OF AMERICA, Defendant in Error.

To the Honorable James F. Tracey, Associate Justice of the Supreme Court of the Philippine Islands:

Now come plaintiffs in error in the above entitled cause, and through their undersigned attorney respectfully represent that on ac-

count of the delay caused by the return of the record to the Court of First Instance, and the subsequent transmission of the same to the Supreme Court of these Islands for the purpose of translation and preparation of the transcript, it will not be possible to have such transmission and transcript completed so as to have the same
235 in Washington, D. C. within the time allowed in the order granting this writ of error.

Wherefore they pray that an enlargement of the time specified in said order be granted, so that the same shall not expire before the twelfth day of January, nineteen hundred and nine.

FRANK B. INGERSOLL,
Attorney for Plaintiffs in Error.

Manila, P. I., November 24, 1908.

236 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

No. 4191.

LOUIS A. DOWDELL, JR., and WILSON W. HARN, Plaintiffs in Error,
versus
THE UNITED STATES OF AMERICA, Defendant in Error.

Order.

Upon petition of counsel for plaintiffs in error, and for the reasons therein set forth, the time for the filing of the transcript of record in this cause with the Clerk of the Supreme Court of the United States, at Washington, D. C., is hereby enlarged, so as not to expire before the twelfth day of January, nineteen hundred and nine, as to the defendant Wilson W. Harn. As to the defendant Louis A. Dowdell, action is suspended until it appears that he is within the jurisdiction of this court.

JAMES F. TRACEY,
Associate Justice Supreme Court
of the Philippine Islands.

Manila, P. I., November 24th, 1908.

Endorsed on cover: File No. 21,472. Philippine Islands Supreme Court. Term No. 332. Louis A. Dowdell, Jr., and Wilson W. Harn, plaintiffs in error, vs. The United States. Filed January 11th, 1909. File No. 21,472.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1910.

No. 131.

LOUIS A. DOWDELL, JR., AND WILSON W. HARN,

Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF OF PLAINTIFFS IN ERROR.

STATEMENT.

The plaintiffs in error were tried in the Court of First Instance of the Province of Samar, Philippine Islands, upon an information purporting to charge them with the crime of misappropriation of public funds. The information was signed by the Provincial Fiscal and was unsupported by

oath or affirmation. The record as sent to the Supreme Court of the Philippine Islands failed to show either that any preliminary examination was held on said complaint, or that either of the defendants was present during his trial, or that either of them was arraigned or pleaded to the information. They were tried by a single judge, without the interposition of a jury, convicted of the crime charged and each sentenced to six years at hard labor.

Upon appeal to the Supreme Court of the Philippine Islands the Attorney General of the Philippine Islands presented a motion praying that the cause be returned to the Court of First Instance for a new trial for the reason that it did not appear from the record that the defendants had pleaded to the information filed against them (see page 109 of record). This motion was denied, and the Appellate Court, after the said cause was submitted to it for decision, of its own motion and without the knowledge of the defendants and appellants, made an order under which the Judge and Clerk of the Court of First Instance were each directed to file a *certificate* as to whether or not the defendants were actually present at the trial in the lower court (p. 110, record), and an attempt at a compliance with this order was made. From the certificate of the Clerk it appears that he (the Clerk) was not actually present at the trial (p. 111).

Thereafter on July 18, 1908, the Supreme Court of the Philippine Islands rendered a judgment affirming the judgment of the trial court, but increasing the penalty to imprisonment for eight years and one day.

A motion of defendants and appellants for a new trial was overruled (p. 121, record), and the case was then brought by a writ of error to the Supreme Court of the United States.

Counsel for Plaintiffs in Error respectfully submit the following:

ASSIGNMENTS OF ERROR.

I.

The Court erred in reopening the case, after it had been argued on both sides and submitted for final decision, and in taking new and additional testimony on its own motion.

II.

The Court erred in taking, admitting, and considering the testimony or statement of the Judge of the Court of First Instance of the Province of Samar, Honorable W. F. Norris, because the same was taken without the knowledge or consent of the appellants or either of them, was not sworn to, and appellants were not given an opportunity to meet said witness face to face or to be confronted by said witness at the time said testimony was taken or said statement was made; all in violation of Article 6 of the Constitution of the United States, and Section 5 of the Act of Congress of July 1, 1902 (32 Stat., 691-692-693), commonly known as the Philippine Bill.

III.

The Court erred in taking, admitting and considering the testimony or written statement of the Clerk Cinco of the Court of First Instance of Samar in regard to what appeared in the minutes of the Court of First Instance of said province, because said testimony or statement was not taken in the presence of the appellants or either of them, and the appellants, nor either of them, had no opportunity to meet said witness face to face and cross-examine said witness while he was giving the testimony or making the statement aforesaid, and because said statement of said Cinco is *not a certified copy* of the minutes or any part

of the minutes of the Court of First Instance of the Province of Samar, and said statement is not sworn to and *has no seal of said Court attached* to the same.

IV.

The Court erred in modifying and affirming the judgment of the Court below, because the defendants and appellants were tried in the Court below during their absence, in violation of Section 15 of General Order No. 58, and of Section 5 of Act of Congress of July 1, 1902 (32 Stat. 691-692-693), commonly known as the Philippine Bill, and in violation of Article 6 of the amendments to the Constitution of the United States.

V.

The Court erred in modifying and affirming the judgment of the Court below in this case, because, so far as shown by the legal record, said defendants and appellants were tried in the Court below without being arraigned and given no opportunity to plead to the complaint in said cause, which said failure was in violation of General Order No. 58, Section 5 of the Act of Congress of July 1, 1902, commonly known as the Philippine Bill (32 Stat., 691), and of Article 6 of the amendments to the Constitution of the United States.

VI.

The Court erred in modifying and affirming the judgment of the Court below and in entering a judgment against the defendants and appellants, because, so far as shown by the legal record, said defendants and appellants had never been given an opportunity to plead to said complaint and no issue had ever been joined between the United States and the defendants and appellants.

VII.

The Court erred in modifying and affirming the judgment of the Court below, and in rendering a judgment against the defendants and appellants or either of them, upon an information upon which no preliminary examination had been held by any Magistrate, Judge, Promotor Fiscal or his deputy, in violation of General Order No. 58, and of Articles 5 and 6 of the amendments to the Constitution of the United States.

VIII.

The Court erred in modifying and affirming the judgment of the Court below and in entering a judgment against the defendants and appellants under the existing provisions of the laws of the Philippine Islands for the issuance of warrants of arrest and for the trial of persons charged with felonies upon information, to wit: Sections 3, 4, 5, 6, 7 and 8 of General Order No. 58; because said sections are unconstitutional and void, in so far as they authorize the prosecution of criminal offenses without any provision for an oath or affirmation to said information, being thereby repugnant to Section 5 of the Act of Congress of July 1, 1902, commonly known as the Philippine Bill.

IX.

The Court erred in modifying and affirming the judgment of the Court below and in entering a judgment against the defendants and appellants, because said defendants and appellants were tried and convicted in the Court below upon an information signed and presented by the Promotor Fiscal, instead of upon a presentment or indictment of a Grand Jury, in violation of Article 5 of the amendments to the Constitution of the United States.

X.

The Court erred in modifying and affirming the judgment of the Court below and in entering a judgment against the defendants and appellants, convicting them of an infamous crime, instead of submitting the question of their guilt or innocence of said crime to a trial by jury, in violation of Sub-section 3 of Section 2 of Article 3 of the Constitution of the United States.

XI.

The Court erred in modifying and affirming the judgment of the Court below and entering a judgment against the defendants and appellants, because said judgment of the Court below and the judgment of this Court are null and void, because each of said judgments is in violation of Section 5 of the Act of Congress of July 1, 1902, commonly known as the Philippine Bill, and of Article 5 of the amendments to the Constitution of the United States, and in violation of General Order No. 58, in that the judgment of the Court deprives the defendants and appellants of their liberty without due process of law.

XII.

The Court erred in overruling the motion of the defendants and appellants for a new trial, and in modifying and affirming the judgment of the Court below, and in entering a judgment against the defendants and appellants.

XIII.

The Court erred in rendering a judgment against the defendants and appellants which is contrary to the law and the evidence.

BRIEF.

1. *The Court erred in reopening the case, after it had been argued on both sides and submitted for final decision, and in taking new and additional testimony on its own motion.*

This rule of procedure upon whose breach this assignment is based seems to be too well established to admit of controversy. The record shows (p. 110, record) that after the motion of the Attorney General of the Philippine Islands for an order returning the cause to the Court of First Instance for a new trial was denied by the Supreme Court, the Attorney General on February 13, 1908, filed his brief and on the 3d day of March, 1908, the case was called for hearing, and no counsel appearing *"the same was considered as submitted and taken under advisement."*

Thereafter on the 20th of March, 1908, the Supreme Court made the order which reopened the case and procured the *ex-parte* statements from the Judge and the Clerk of the Court of First Instance.

2. *The Court erred in taking, admitting and considering the testimony or statement of the Judge of the Court of First Instance of the Province of Samar, Honorable W. F. Norris, because the same was taken without the knowledge or consent of the appellants or either of them, was not sworn to, and appellants were not given an opportunity to meet said witness face to face or to be confronted by said witness at the time said testimony was taken or said statement was made; all in violation of Article 6 of the Constitution of the United States and Section 5 of the Act of Congress of July 1, 1902, commonly known as the Philippine Bill.*

Clearly this unsworn statement of the trial Judge after the case was in the Appellate Court is an infraction of the

provisions of the Constitution of the United States and of Section 5 of the "Philippine Bill," to the effect that "the accused shall enjoy the right * * * to meet the witnesses face to face." This principle was recognized by the Attorney General of the Philippine Islands when he filed his motion with the Supreme Court of the Islands asking that the cause be returned to the Court of First Instance for a new trial.

The only response from the trial Judge was a letter from him to the Clerk of the Supreme Court (pp. 110-111, record). This letter is not sworn to nor certified under the *seal* of the Court, and is in no sense a compliance with Section 303 of the Code of Procedure in Civil Actions, which provides that "A judicial record of the proceedings in a court of justice, or of the official acts of a judicial officer in an action or special proceedings, within the United States, or any State or Territory thereof, or within the Philippine Islands, may be proved by the production of the original, or by a copy thereof, certified by the Clerk or other person having the legal custody thereof, with the seal of the Court annexed, together with a certificate of the Chief Judge or presiding magistrate that the attestation is in due form." This rule of evidence has been followed in criminal cases in the Philippine Islands, together with the provisions of Section 59 of General Order No. 58 of the United States Military Governor of the Philippine Islands (the only Code of Criminal Procedure), which provides that "the best evidence must be produced of which the case is susceptible. But copies of public records and documents * * * shall be admissable in lieu of the originals."

3. *The Court erred in taking, admitting and considering the testimony or written statement of the Clerk Cinco of the Court of First Instance of Samar in regard to what appeared in the minutes of the Court of First Instance of said province, because said testimony or statement was not*

taken in the presence of the appellants or either of them, and the appellants, nor either of them, had no opportunity to meet said witness face to face and cross-examine said witness while he was giving the testimony or making the statement aforesaid, and because said statement of said Cinco is not a certified copy of the minutes or any part of the minutes of the Court of First Instance of the province of Samar, and said statement is not sworn to and has no seal of said Court attached to the same.

The same objections apply to this statement of the Clerk as already pointed out in the case of the Judge of the Court of First Instance. Moreover the statement is not a certified copy of the minutes of the Court of First Instance of the province of Samar. It is not under seal of the Court and there is no "attestation of the Chief Judge or presiding magistrate that the attestation is in due form." (Pp. 112, 113, 114, Record.)

The alleged certificate by H. V. Bamberger, the Court Reporter (p. 118, Record), is not under the seal of the Court nor does it appear that he was the legal custodian of any court records. Moreover, the statement of the said Bamberger is not under oath and only professes to set forth the contents of certain shorthand notes taken by him.

4. *The Court erred in modifying and affirming the judgment of the Court below, because the defendants and appellants were tried in the Court below during their absence, in violation of Section* 15 *of General Order No.* 58, *and of Section* 5 *of Act of Congress of July* 1, 1902, *commonly known as the Philippine Bill, and in violation of Article* 6 *of the amendments to the Constitution of the United States.*

The record upon which the cause was heard and submitted in the Supreme Court of the Philippine Islands failed to disclose that the defendants, or either of them, were present during their trials in the court below. This is fatal

and upon this assignment alone said judgments should be reversed. Sub-section 1 of Section 15 of General Orders No. 58, under the caption "Rights of Accused at the trial" reads "To appear and defend in *person* and by counsel at every stage of the proceedings." The second paragraph of Section 5 of the Act of Congress of July 1, 1902, commonly known as the "Philippine Bill," provides, "That in all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel, to demand the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to compel the attendance of witnesses in his behalf."

Article 6 of the Amendments to the Constitution of the United States provides:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence."

The personal presence of an accused during the whole trial in a felony case is a fundamental right and a constitutional privilege which the accused himself cannot waive. This proposition is so well settled that it hardly admits of argument or citation of authorities. However, we cite the Court the following authorities, to wit:

> Prime vs. Commonwealth, 18 Pa. St., 103;
> Waller vs. State. 40 Ala., 333;
> Wharton Criminal Pleading and Practice, Sec. 540;
> Vol. 1, Bishop Criminal Procedure, Sec. 271-1353;
> Jackson vs. Commonwealth, 19 Gratt. (Va.), 256.

Dorman, J., delivering the opinion of the Court in the case last cited, says:

> "No principle is supposed to be better settled, and, in all criminal cases of the grade of felony, more rigidly adhered to, than that in all such trials the prisoner has a right to be present in every stage, from the arraignment to the rendition of the verdict. It is held to be a right of which he cannot be deprived, and which he cannot waive. So imperative is the rule of law, that no part of the trial can proceed without him."

The record in this case is the only source of information as to the personal presence of the defendants and appellants during their trials in the court below. It contains no evidence of such presence and therefore it must be assumed that the defendants were absent. The personal presence of the accused must be affirmatively shown by the record. The record in this case does not show that either of the defendants and appellants was personally present at the trial, but inferentially negatives the idea that they were present. In the beginning of the trial, the record, under the head of "Appearances," recites that Isaac Adams and Emilio Araneta appeared for the Government and Joseph N. Wolfson and L. M. Southworth appeared for the defendants. Looking to the record alone, and the record is the only source from which this Court can derive information as to the proceedings had in the lower court, this court must conclude that the defendants and appellants were *not* present in person during the trial in the court below.

In support of the proposition that the record must affirmatively show the personal presence of the accused during the whole trial in felony cases, we cite the Court the following authorities, to wit:

State vs. Dooley, 64 Mo., 149;
State vs. Barnes, 59 Mo., 154;
Kelly vs. State, 3 Smed. & M., 518;

Shoppoomosh vs. United States, 1 Wash. Ter., 219;
Graham vs. State, 40 Ala., 659;
Eliza vs. State, 39 Ala., 693;
Younger vs. State, 2 W. Va., 579;
Hamilton vs. Commonwealth, 18 Pa. St., 129;
State vs. Langford, 1 Bush (Ky.), 436;
Long vs. State, 52 Miss., 23;
Cole vs. State, 10 Ark., 318.

The record must affirmatively show all of those indispensable requisites which are necessary to the validity of the record as a judicial proceeding. The judgment is absolutely void without a showing of such essential requisites as that the accused was represented by counsel; that he was regularly arraigned; that a case was made up for trial, that the accused was present in court; that the accused was confronted by the witnesses against him, and that a judgment was rendered in his presence.

Dyson vs. State, 26 Miss., 362;
Stubbs vs. State, 49 Miss., 716;
French vs. State of Wisconsin, 21 Lawyers Reports annotated, 402.

The Supreme Court of the Philippine Islands took it upon itself after the cause had been finally submitted to it for decision to attempt to rectify the discrepancies in the record before them by taking statements from the Judge and the clerk as already pointed out under assignment One.

It further appears that even without the order of the Supreme Court one Bamberger, of his own motion, contributed a statement (p. 118). As already pointed out none of these statements were sworn to, none under seal of Court and none made in the presence of the defendants, nor did they have any knowledge that such statements were to be taken.

5. *The Court erred in modifying and affirming the judgment of the Court below in this case, because so far as shown by the legal record, said defendants and appellants were tried in the Court below without being arraigned and given no opportunity to plead to the complaint in said cause, which said failure was in violation of General Order No. 58, Section 5, of the Act of Congress of July 1, 1902, commonly known as the Philippine Bill (32 Stat., 691), and of Article 6 of the amendments to the Constitution of the United States.*

In Sec. 16 of General Order 58 occurs the following language:

> "When a complaint or information shall have been filed the defendant must be arraigned thereon before the Court in which it is filed, unless the cause shall have been transferred elsewhere for trial."

Section 5 of the Act of Congress of July 1, 1902 (32 Stat., 691-692-693), provides that in criminal prosecutions the accused shall have the right—

> "to demand the nature and cause of the accusation against him."

The provision on this subject in Article 6 of the Amendments to the Constitution of the United States is almost identical with the one above quoted from the Act of Congress of July 1, 1902, and reads: "In all criminal prosecuions, the accused shall enjoy the right * * * to be informed of the nature and cause of the accusation."

The record fails to show that either of the defendants and appellants was arraigned in the trial court. The fact that an accused, in a felony case, *must be arraigned* before there can be a legal trial is as well settled in the jurispru-

dence of every civilized country on the face of the earth as any proposition was ever settled by a mathematical demonstration, and the proposition that this fact must be affirmatively shown by the record is almost as well settled.

Early vs. State, 1 Tex. App., 266;
Holden vs. State, 1 Tex. App., 247;
Pringle vs. State, 2 Tex. App., 300;
Grater vs. State, 54 Ind. 159;
McJunkins vs. State, 10 Ind. 140;
State vs. Cheek, 63 Mo., 364;
State vs. Matthews, 10 Mo., 55;
Aylesworth vs. People, 65 Ill., 301;
Yund vs. People, 65 Ill., 372;
Johnson vs. People, 22 Ill., 314;
State vs. Wilson, 42 Kan., 587;
Cachute vs. State, 50 Miss., 165;
Hanson vs. State, 43 Ohio St., 376;
Warroce vs. State (Fla.), 8 So. Rep., 748;
State vs. Revells, 31 La. Ann., 387;
State vs. Epps, 27 La. Ann., 227;
State vs. Taylor, 111 Mo., 448;
Bowen vs. State, 98 Ala., 83;
Berry vs. State, 37 Ark., 54;
Douglas vs. State, 3 Wis., 820;
Hill vs. State, 1 Yerger (Tenn.), 76.

Even in misdemeanor cases some courts of high authority hold, where the records fail to show arraignment and plea, judgment will be reversed.

State vs. Van Hook, 88 Mo., 105;
State vs. Gerger, 45 Mo. App., 111;
Miller vs. People, 47 Ill. App., 472.

6. *The Court erred in modifying and affirming the judgment of the Court below and in entering a judgment against the defendants and appellants, because so far as shown by the legal record, said defendants and appellants had never*

been given an opportunity to plead to said complaint and no issue had ever been joined between the United States and the defendants and appellants.

In felony cases a valid arraignment consists of three parts:

(1) Calling the prisoner to the bar by name; (2) reading the indictment, information or complaint to him; (3) demanding of him whether he is guilty or not guilty.

All of these three parts must concur in order to make a valid, completed whole. The prisoner must answer, or standing mute, the Court must cause a plea of not guilty to be entered in order to make up an issue; if not, there is nothing for the court to try and there can be no valid trial had and any judgment is a nullity.

Johns vs. State, 104 Ind., 557;
Morris vs. State, 4 Tex. App., 589;
Fisher vs. State, 46 Ala., 723;
Sartorious vs. State, 24 Miss., 602;
State vs. Saunders, 54 Mo., 234;
Gould vs. People, 89 Ill., 216;
State vs. Dillingham, 43 Ark., 154;
Burley vs. State, 1 Neb., 385.

The record must show affirmatively that the accused did plead to the charge. In support of this contention the Court is respectfully referred to the authorities cited above upon this proposition under assignments 4 and 5. There was no waiver of a plea by either of the defendants and appellants in this case. The case of People vs. Corbett, 28 Cal., 228, is clearly in point and we respectfully submit is decisive of the case at bar under this assignment of error. In that case the accused, Corbett, appeared in Court anterior to the trial, was called by the Clerk for arraignment and was informed that he was charged with grand larceny. At a later date the accused appeared in court accompanied by

his counsel and moved for a severance, which was granted him; introduced witnesses and had his case argued before the jury by counsel, and the Supreme Court of California held that he had not waived his right to plead and that the above case was decided in the face of Section 601 of the California Criminal Practice Act which provides that no defect or imperfection in matters of form that does not tend to prejudice the defendant shall in any manner affect the trial, judgment, or other proceedings, and that no departure from the form or mode prescribed by the Act in respect to any pleadings or proceedings, and no error or mistake therein, shall render the same invalid, unless it has prejudiced or tended to prejudice the defendant in respect to a substantial right. In commenting upon the above Practice Act, the Supreme Court of California, through Shafter, J., says:

> "Section six hundred and one of the Criminal Practice Act does not extend to the case of a verdict where there is a plea but no indictment, nor does it reach the case of a verdict where there is an indictment, but no plea. Where either of the two are wanting, it is as fatal as though both were wanting. The presence of an oath administered to the jury would impose no obligation, nor would false swearing on the part of witnesses amount to perjury. That a trial so conducted 'would tend to prejudice the defendant in respect to a substantial right' (Cr. Pr. Act, Sec. 601), is too plain for argument."

> "The record must show that the parties pleaded, and in felony cases the pleading cannot be waived. It is not the 'yes' or 'no' of the prisoner that is to decide whether a plea has been entered or not. The record is to be the source of information in such cases."
> Boreman, J., in People vs. Heller, 2 Utah, 135.

In Tindall vs. State, 71 Ind., 314, the record showed that the defendant waived arraignment, and, "thereupon, the issues being joined, this cause," etc., but did not contain any written plea, or show the entry of an oral plea by such defendant. It was held that the Supreme Court in such case must presume that no plea whatever was filed, and that such cause was tried without any issue, and, therefore, that such trial was erroneous.

In Grigg vs. People, 31 Mich., 471, is was held that where a return to a writ of error was silent as to whether an arraignment was had, or a plea made, the omission could not be supplied by a presumption of regularity.

7. The Court erred in modifying and affirming the judgment of the Court below, and in rendering a judgment against the defendants and appellants or either of them, upon an information upon which no preliminary examination had been held by any magistrate, judge, promoter fiscal or his deputy, in violation of General Order No. 58, *and of articles* 5 *and* 6 *of the amendments to the Constitution of the United States.*

The record fails to disclose that any preliminary examination was held on the information upon which the defendants and appellants were tried and sentenced in this case.

Section 12 of General Order 58 is as follows:

> "Every person making complaint charging the commission of a crime or public offense must inform the magistrate of all persons whom he believes to have any knowledge of its commission; and the magistrate shall issue subpœnas for such persons, requiring them to attend at a specified time and place as witnesses."

We take it that the words "every person," used in the Section above quoted, include the promoter fiscal and that

the word "complaint" is used in its general sense and means a charge or accusation, and we construe the word "magistrate," as used in said section and in sections 13 and 14 of the same law, as including Justices of the Peace, Judges of Courts of First Instance, and all other officials authorized by law to hold committing trials. Sections 13 and 14 prescribe practically the same procedure as to complaints and informations. In the last paragraph of Section 14 occurs the following language:

> "In case the Promoter Fiscal may appeal from the order of release, the Judge shall subject the accused to such inspection and measures of vigilance as may be deemed prudent to prevent his escape."

In the case of Ramona Trinidad, complainant and appellant, Volume 3, Philippine Reports, 518, the complaint was presented to a Judge of the Court of First Instance of the City of Manila and the Supreme Court of the Philippine Islands held on appeal that the complaint was rightly presented and that the Judge of the lower court had no right to dismiss the complaint but should have proceeded to investigate the same under the provisions of Section 13 of General Order 58, thus holding that the word "magistrate," as used in the statute, applied to the Judges of the Courts of First Instance as well. We think that Sections 12, 13 and 14 of General Order 58 clearly contemplate a preliminary examination before a warrant of arrest is issued, at which examination the person making the charge, whether by complaint or by information, must make out a case of probable guilt against the accused. Not only the positive provisions of the law require that a preliminary examination be held before a warrant of arrest is issued and a person placed upon his trial on a felony charge but the spirit and genius of American jurisprudence is opposed to any other course.

8. *The Court erred in modifiying and affirming the judgment of the Court below and in entering a judgment against the defendants and appellants under the existing provisions of the laws of the Philippine Islands for the issuance of warrants of arrest and for the trial of persons charged with felonies upon information, to wit: sections* 3, 4, 5, 6, 7 *and* 8 *of General Order No.* 58; *because said sections are unconstitutional and void, in so far as they authorize the prosecution of criminal offenses without any provision for an oath or affirmation to said information, being thereby repugnant to section* 5 *of the Act of Congress of July* 1, 1902, *commonly known as the Philippine Bill.*

9. *The Court erred in modifying and affirming the judgment of the Court below and in entering a judgment against the defendants and appellants, because said defendants and appellants were tried and convicted in the Court below upon an information signed and presented by the Promoter Fiscal, instead of upon a presentment or indictment of a Grand Jury, in violation of Article* 5 *of the amendments to the Constitution of the United States.*

In section 5 of the Act of Congress of July 1, 1902 (32 Stat., 691), appears the following language:

> "That no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized."

This language of the fundamental law of the Philippine Islands plainly announces that no warrant shall issue for the arrest of any person in these Islands but upon probable cause supported by oath or affirmation. Can it be successfully contended, in the face of this positive declaration of the Bill of Rights of the people of the Philippine Islands, that a valid warrant of arrest can issue upon an informa-

tion unsupported by oath or affirmation? We think undoubtedly not. If a warrant is illegal and void on account of some inherent vice or the invalidity of the information upon which it is issued, can there be a legal trial? We unhesitatingly answer this question in the negative.

It is well settled in American jurisprudence that, if an officer attempts to serve a warrant of arrest upon any person predicated upon an indictment which is fatally defective or void, or upon a statute which is unconstitutional, he acts at his peril and said person may treat the acts of the officer in so attempting his arrest as an illegal aggression and meet force with force even to the taking of the life of said officer, if such a course be necessary, or apparently necessary, to save his life or protect himself against some great bodily harm. In other words his acts are treated as those of any other individual who has no warrant at all.

The word "information" as applied to a legal document comes from the French law and is defined as, *"The act or instrument which contains the depositions of witnesses against the accused."*

In Vol. I, Bishop's Criminal Procedure, Sec. 141, it is defined as "An accusation in the nature of an indictment, from which it differs only in being presented by a competent public officer on his oath of office, instead of a grand jury on their oath." Mr. Bishop in his first volume of Criminal Procedure says, "It is a concurrent remedy with indictment for all misdemeanors except misprision of treason, but not permissible in felony." We are aware that felonies are prosecuted by information under the laws of several of the States of the United States and that such laws have been held constitutional by the Supreme Court of the United States, on the ground that the constitutional provision that "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury," did not apply to State

laws—obviously for the reason that the Federal Government is a government of delegated powers, with all of the powers not expressly delegated to the government reserved to the States and the people respectively. But the Supreme Court of the United States has as uniformly held that this constitutional provision did apply to all prosecutions for felonies in Federal Courts. We take it that the courts of the Philippine Islands are Federal Courts. They are so regarded in the majority opinion of the Supreme Court of the United States in the Trono case, 199 U. S., 521.

The government of the Philippine Islands is a government of delegated powers, deriving all of its powers to legislate from the Federal government of the United States through the Acts of Congress. The government of the Philippine Islands has no authority and the Congress of the United States can give it no authority to pass laws repugnant to any provision of the Constitution of the United States and especially any of those provisions which have been extended by the Act of Congress of July 1, 1902 (32 Stat., 691), commonly known as the "Philippine Bill," to the people of the Philippine Islands. That provision of the Constitution which declares, "That no warrant shall issue but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person or thing to be seized," was extended to the people of the Philippine Islands by the Act of Congress of July 1, 1902. We contend that an information, unsupported by oath or affirmation, is absolutely void as being repugnant to this provision of the fundamental law of the Philippine Islands. We contend that this provision of the organic law was extended to the people of the Philippine Islands and designed to protect them from illegal prosecutions as well as from illegal arrests. This same provision, in almost the exact language, appears in the Constitution of the

United States. Can it be contended that the framers of that instrument intended to declare that a warrant issued upon an information, unsupported by oath or affirmation, should be illegal and at the same time the information should be legal and a legal trial conducted and a legal conviction had on the same? We think not. For of what avail is the constitutional protection against warrants of arrest issued upon informations unsworn to, if persons can be tried and convicted under said informations? Manifestly it is not alone the issuance of the warrant, but also the illegal arrest and punishment of the person which is the real danger guarded against by the constitution. Is not the intent and spirit of the provision as much violated when a person is tried and convicted upon a charge unsupported by oath or affirmation as when a warrant is issued upon an information of this character? The proposition seems to us conclusive and we do not doubt that this was the main purpose of the provision.

The Supreme Court of the United States has several times decided that convictions of felony, in Federal Courts, upon informations unsupported by oath or affirmation are void as being repugnant to this provision of the Constitution. It has been extended to the Philippine Islands by said Act of Congress of July 1, 1902 (32 Stat., 691). Has it not the same meaning in this act as it has in the Constitution of the United States? Could it have been used by Congress in any other sense than that which has been placed upon it in construing the instrument from which it was taken?

It is well-settled rule of construction that language used in a statute which has a settled and well-known meaning, sanctioned by judicial decision, is presumed to be used in that sense by the legislative body. (The Abbottsford, 96 U. S., 440.)

10. *The Court erred in modifying and affirming the judgment of the Court below and in entering a judgment against the defendants and appellants, convicting them of an infamous crime, instead of submitting the question of their guilt or innocence of said crime to a trial by jury, in violation of sub-section 3 of section 2 of article 3 of the Constitution of the United States.*

The argument that an American citizen, upon American territory, is denied the protection of the fundamental guarantees of the American Constitution is a proposition which cannot be easily accepted by a people imbued with the principles of civil rights which have ever been regarded as essential to the maintenance of our government. The question has not been settled and will never be settled as long as the Stars and Stripes float over these Islands unless the Supreme Court of the United States reverses the majority decision in the Dorr case (195 U. S., 138). The doctrine of *stare decisis* is never predicated upon the decisions of divided courts. And the decisions of courts upon constitutional questions, to which the doctrine would otherwise apply, are more readily reserved. In such case said Bleckley, C. J., "The maxim for a Supreme Court 'supreme is the majesty of duty as well as is the majesty of power' is not *stare decisis*, but *fiat justitia ruat coelum.*' "

In support of the two assignments of error upon the point of the constitutional right of a citizen of the Philippine Islands to presentment or indictment by a grand jury and trial by jury, we are content to cite the dissenting opinion of Mr. Justice Harlan in the Trono case, 199 U. S., 521.

11. *The Court erred in modifying and affirming the judgment of the Court below and entering a judgment against the defendants and appellants, because said judgment of*

the Court below and the judgment of this Court are null and void, because each of said judgments is in violation of section 5 of the Act of Congress of July 1, 1902, commonly known as the Philippine Bill and of Article 5 of the amendments to the Constitution of the United States, and in violation of General Order No. 58, in that the judgment of the Court deprives the defendants and appellants of their liberty without due process of law.

Both Section 5, of the Act of Congress of July 1, 1902, and Article 5, of the Amendments to the Constitution of the United States, provide that no person shall be "deprived of life, liberty, or property, without due process of law."

Trying the defendants and appellants without requiring a presentment of a grand jury and without submitting the question of their guilt or innocence to a trial by jury; upon an information unsupported by oath or affirmation; without a preliminary examination on said information; without arraignment upon and plea to said information and in their absence, was denying to them due process of law, as provided for in the two laws above cited.

12. *The Court erred in overruling the motion of the defendants and appellants for a new trial, and in modifying and affirming the judgment of the Court below, and in entering a judgment against the defendants and appellants.*

Upon the rendition of the decision of the Supreme Court of the Philippine Islands, the defendants excepted thereto and filed a motion for a new trial. Two of the grounds set up in support of the motion were (p. 121, Record) as follows:

> "2. The Court erred in taking the testimony of the witnesses Norris, Bamberger and Cinco without any suggestion on behalf of either party that there was any diminution in the record, as it came from the Court below, and for the further reason that said testimony

was taken in the absence of the defendants, with no opportunity afforded them of cross-examining said witnesses or introducing rebutting evidence; all in violation of the defendants' constitutional rights, 'to be confronted by the witnesses against them.'

"3. The Court erred in considering the testimony of the witnesses Norris, Bamberger and Cinco because the statements of said witnesses were not certified copies of any record in the case, were not sworn to and had no seal of the Court affixed."

Here certainly was prejudicial error. It would seem that the Supreme Court of the Philippine Islands, in view of its proceeding upon its own motion to attempt to rectify a record fatally defective, felt that it could not enter a legal judgment upon such a record.

To supply this record as was done was clearly error and so prejudicial to the defendants' rights as to warrant the granting of a new trial.

13. *The Court erred in rendering a judgment against the defendants and appellants which is contrary to the law and the evidence.*

The basis of this assignment has already been discussed in the consideration of other assignments.

In conclusion, we refer to the recent decision of this Honorable Court in case of Weems vs. U. S., 217 U. S.,349, as having a direct bearing on the theory that the intention of Congress, in providing a form of civil government for the Philippine Islands was to throw around the citizens of those islands the safeguards and protection common to the United States. It is true that in the Weems case, the point on which the decision hinged was whether or not the punishment imposed was cruel or unusual, but it is our desire to

lay stress upon the fact that in arriving at the conclusion stated in that decision, this Court did not measure the degree or extent of the punishment by the practice, rules or customs of Spain, or of the Philippines under the Spanish régime, but by the customs and practice and jurisprudence of America and England.

It is needless to say that we do not call into question the right of an appellate court to suggest a diminution of the record, of its own motion, and of its right to issue a writ of *certiorari* to an inferior tribunal for the purpose of bringing a full record before it, but what plaintiffs in error do insist upon, with all possible earnestness, is that there is a proper and legal manner of accomplishing this, and only one legal manner of so doing. The writ should issue, running to the lower court, commanding the certification of whatever papers are desired.

Such certification must, of necessity, *be under the seal* of that lower court, and under the certificate at any rate of either the judge or the clerk of the court.

If, however, the record of the lower court itself is fatally defective, then it is impossible, under any known system of jurisprudence, to call upon the judge or the clerk to certify to matters which may be within their personal knowledge, but which are not matters of record.

In the case at bar, the so-called certified copies of minutes transmitted by the clerk of the trial court to the Supreme Court of the Philippines, are absolute nullities, because they are *not* certified copies, and are not given under the seal of the trial court.

It is true that in his letter of March 29, 1908, addressed to the clerk of the Supreme Court of the Philippines, the clerk of the trial court says he encloses a "certified copy" of docket entries, but that statement in his *letter* cannot supply the required certificate which is non-existent. The clerk of the trial court may have intended to attach a proper

certificate, under seal, to the alleged copies of minutes or docket entries, but that is all beside the case, in light of the fact that he did *not* certify to said purported copies, under the seal of his court.

Hence, said supposed copies of docket entries, printed on pages 112, 113, and 114, of the record, cannot be considered at all, for any purpose. Without them, the record before the Supreme Court of the Philippines and before this court, is fatally defective in that it fails to show any arraignment, the entering of any plea, or that the defendants or accused were present during their trials.

As to the personal statement of Judge Norris, the trial judge, set forth on pages 110, 111 of the record, that is most obviously wholly inadmissible for any purpose. The mere statement of Judge Norris is no more admissible as evidence than would be the personal statement of counsel for plaintiffs in error to show the contrary. A practice which would admit to consideration the statement of Judge Norris would also admit statements of counsel to contradict that of the judge. If that be permitted, then there would be an issue of *fact* raised for the consideration of the appellate court, without the machinery necessary to its trial.

The same remarks apply to the so-called certificate of the court reporter.

The Supreme Court of the Philippines, in its effort to take a short cut to what it doubtless considered the merits of the case, has disregarded the most fundamental laws of evidence and procedure, without seeing the dangers which must follow in its train.

It is submitted that the action of an appellate court *must*, of necessity, be based upon the legal *record* from the court below, and it is not within the power of the appellate tribunal to go outside of the record, to call upon different per-

sons for their recollection of events incident to the trial, for the purpose of making for its own use a *new* record.

We rely further, upon the decision of this court in case of Lewis vs. U. S., 146 U. S., 370-387. In that case the principal point involved was whether or not the *record* showed that the accused was present throughout the various steps constituting the trial of the case, and in considering this question, this court quoted with approval from the opinion of the Supreme Court of Mississippi, in the case of Dyson vs. State, 26 Miss., 362, the following language:

> "It is undoubtedly true that the record must affirmatively show those indispensable facts without which the judgment would be void—such as the organization of the court; its jurisdiction of the subject matter and of the parties; that a cause was made up for trial; that it was submitted to a jury sworn to try it (if it be a case proper for a jury); that a verdict was rendered, and judgment awarded. * * * It is also true, as has been held by this court, 'that nothing can be presumed for or against a record except what appears substantially upon its face.' * * * This rule has reference to those indispensable requisites necessary to the validity of the record as a judicial proceeding."

The language quoted would therefore seem to state a rule approved by this Honorable Court, and stated as a part of the reason for its decision in the Lewis case.

Applying it to the case at bar, and what must be its effect? The language quoted shows that the *record* must *affirmatively* show that *"a cause was made up for trial."* How can this be shown unless it affirmatively appears from the record that the accused was arraigned and pleaded not guilty? It is the *plea* of the accused, when arraigned, that places in issue the charge of the information, indictment or complaint, and unless he has been arraigned and has

pleaded, there can be no issue; or, to quote from the decision cited, without arraignment and plea, there can be *no* "cause made up for trial."

This Court itself used the following language:

> "A leading principle that pervades the entire law of criminal procedure is that, after indictment found, nothing shall be done in the absence of the prisoner. While this rule has, at times, and in the case of misdemeanors, been somewhat relaxed, yet in felonies, it is not in the power of the prisoner, either by himself or his counsel, to waive the right to be personally present during the trial. * * * And it appears to be well settled that, where the personal presence is necessary in point of law, the record must show the fact."

Assuredly the record which was before the Supreme Court of the Philippines did *not* show this fact; the Attorney General recognized the failure of the record to show arraignment, plea or personal presence of the accused, and he himself moved the remand of the case for a new trial.

It was in the endeavor to make up a record that *would* show these facts that the Supreme Court of the Philippines adopted the most novel step of calling upon the trial judge to make a personal statement of fact, with which to supplement the record. Of course, the statement of the trial judge could be here disregarded as surplusage, had the record been shown to be complete by the submission of certified copies of the record of the trial Court, but, while an effort was apparently made to furnish such certified copies of the minutes or dockets, no such certified copies were furnished, nothing being certified under the hand of the clerk of the trial Court as being true, full and correct copies of the original entries, and nothing at all being furnished under the seal of the trial Court.

Upon this general rule that in trials for felony, the prisoner must be personally present whenever any step is taken

by the Court in his case, and that this must *affirmatively* appear by the *record*, or a judgment of conviction must be reversed, we cite the following cases:

McQuillen vs. State, 8 Smedes & M., 587.
Dougherty vs. Commonwealth, 69 Pa., 286.
Brown vs. State, 24 Ark., 620.
Osborn vs. State, 24 Ark., 629.
Holton vs. State, 2 Fla., 500.
Gladden vs. State, 12 Fla., 562.
Rutherford vs. Commonwealth, 78 Ky., 639.
State vs. Elkins, 63 Mo., 159.
People vs. Vail, 6 Abb. N. C., 206.
U. S. vs. Santos, 5 Blatch., 104.
Sahlinger vs. People, 102 Ill., 241.
1 Bishop Crim. Proc., Sec. 682.
Maurer vs. People, 43 N. Y., 1.
Wheeler vs. State, 14 Ind., 573.
Jones vs. State., 26 Ohio St., 208.

The converse statement of the same principle is also found in the decision of this Court in case of White vs. U. S., 164 U. S., 100, wherein it was stated, in effect, that a record which *did* show indictment, *arraignment*, *plea*, trial and conviction, was a sufficient record.

The determination on part of the Supreme Court of the Philippines to decide this case regardless of the deficiencies in the record, is clearly apparent from the fact, shown on pages 109-110 of the record, that the Attorney General himself moved that the case be remanded for a new trial,

> "for the reason that it does not appear from the record that the defendants pleaded to the complaint filed against them, declaring themselves guilty or not guilty."

In short, the prosecuting officer appearing before the Supreme Court of the Philippines recognized the fatal insufficiency of the record to support a judgment of affirma-

tion, and sought to have a new trial ordered to remedy this very defect, but the Supreme Court of the Islands refused to allow his motion to that effect, but went about the business of making up a record new and different for itself on which to consider the case, from which it would appear that the Attorney General of the Philippines had a greater regard for established forms of judicial procedure than had the Supreme Court of those Islands.

It is therefore submitted that the judgment of the Supreme Court of the Philippines should be reversed by this Honorable Court.

Respectfully submitted,

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Of Counsel.

In the Supreme Court of the United States.

OCTOBER TERM, 1910.

LOUIS A. DOWDELL, JR., AND WILSON W. HARN, plaintiffs in error,
v.
THE UNITED STATES.
No. 131.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF ON BEHALF OF THE UNITED STATES.

STATEMENT OF THE CASE.

This cause is here on a writ of error to the Supreme Court of the Philippine Islands, and a brief history of the case is as follows:

On July 31, 1907, a complaint was filed in the Court of First Instance, at Catbalogan, against Louis A. Dowdell and Wilson W. Harn, in which it was charged that Dowdell was an inspector of the Philippine constabulary stationed in the Province of Samar as supply officer of the bureau of constabulary, that by virtue of his office he was in charge of public funds and property to the value of fourteen thousand pesos, more or less, that about January 11, 1907,

he and Harn conspired together for the purpose of stealing and converting to their own use all of the funds in Dowdell's custody, and that in pursuance of this conspiracy, on the day mentioned at nightfall, they did abstract said funds and appropriate them to their own use. (Rec., pp. 1 and 2.)

On March 30, 1907, an amended complaint was filed, in which Charles H. McIlvaine was also made a party defendant, and in which all three were charged with the offense set out in the original complaint, and it was further charged that all three were inspectors and lieutenants of the Philippine constabulary, Harn being officer of the day and in duty bound to protect the funds under Dowdell's custody, and McIlvaine belonging to another station but being temporarily present at Catbalogan, and that they, in pursuance of the conspiracy, after abstracting the funds, removed the safe in which the funds had been kept and sank it in the bay. (Rec., pp. 4 and 5.)

A demurrer was filed to the complaint by Dowdell and Harn, but was overruled by the court. (Rec., p. 6.)

Thereafter the defendants were tried separately before Judge Norris, substantially the same evidence being introduced against each. There was no question about their guilt. McIlvaine had, shortly after the theft, made a statement of what had occurred, and from this information all the money had been found, and even the safe had been recovered from the bottom of the bay. He testified to the facts on the trial of both Dowdell and Harn, and neither of them

testified or offered any testimony in his own behalf. The court found McIlvaine guilty as an accessory and sentenced him to prison for a period of four months, and found Dowdell and Harn guilty as principals of taking, as alleged, nine thousand nine hundred and seventy-one pesos and twenty-six centavos of the public funds, but further found that the fact that they had been drinking heavily at the time the theft was committed was an extenuating circumstance, and therefore fixed the sentence of each at imprisonment for six years and a day. Each of the defendants was adjudged to pay one-third of the costs of the prosecution. (Rec., pp. 102–106.)

Dowdell and Harn thereupon took an appeal to the Supreme Court of the Philippine Islands, and there filed sixteen assignments of error, the first three of which were:

First. The court erred in trying the appellants in their absence, in violation of section 15 of General Order No. 58, and of section 5 of the act of Congress of July 1, 1902, and of the sixth amendment to the Constitution of the United States.

Second. The court erred in trying and passing judgment upon appellants without first arraigning them, in violation of the order, act of Congress, and amendment to the Constitution aforesaid.

Third. The court erred in trying appellants without requiring them to plead to the information and without a joinder of issues. (Rec., p. 107.)

As the record then appeared in the Supreme Court there was nothing to show that the appellants were

arraigned and required to plead, or that they were present when tried, or when judgment was pronounced; and the Attorney General asked that the record be returned to the Court of First Instance for a new trial, because it did not appear that the appellants had pleaded to the complaint, which request was by the court denied. (Rec., pp. 109, 110.) Thereupon the court entered the following order:

> *Resolved*, That the clerk of the Court of First Instance of Samar be, and he is hereby, directed to send forthwith to this court a certified copy of all entries in any book in his office referring to the case of *The United States* v. *Louis A. Dowdell and Wilson W. Harn*, and particularly of any entry relating to the arraignment of the defendants and to their plea.
>
> He is further directed to at once send to this court a certificate as to whether he was present at the separate trial of each of the defendants, Dowdell and Harn, and if so, whether each or both of them were present at such trial; and the Hon. W. F. Norris, the judge who tried the case, is hereby directed to send to this court a certificate showing whether the defendants and each of them were present during the trial of said cause against Louis A. Dowdell and Wilson W. Harn. (Rec., p. 110.)

To this order Judge Norris submitted the following reply:

> In compliance with the order of the Supreme Court directing me to certify whether the

defendants, Louis A. Dowdell and Wilson W. Harn, were present in court during the trial entitled *The United States* v. *Louis A. Dowdell and Wilson W. Harn*, at Catbalogan, during the month of May, 1907, held before me as judge of the Twelfth Judicial District, I transmit the statement following:

I certify that each of said defendants, Louis A. Dowdell and Wilson W. Harn, was present in open court during the entire time of his trial in said case, from the calling of the case till after the sentence was pronounced. In this connection I would also state that, as I recollect, a separate trial was granted to each defendant at the request of his counsel. The case first came before Judge Smith, when holding a special term at Catbalogan, who adjourned the hearing till the regular March term for the province. After repeated and urgent requests by mail and telegram from defendant's counsel I adjourned the trial to May 2, setting a special term at Catbalogan to hear the case, and going there for that purpose. As to whether there was a formal arraignment of the defendants—that is, whether after the reading of the information to them they were asked to plead—I am unable to state. I do not recollect whether such arraignment was had before myself as judge, and am ignorant whether defendants were arraigned before Judge Smith before he granted the first continuance of the case. Every opportunity, however, was given both defendants to formally plead, and if such omission, if there were such, was not waived by the continuance of the case

> at their own request, the objection was not raised in the lower court on motion for a new trial. (Rec., pp. 110, 111.)

The official reporter certified that his notes of the proceedings show that defendants were arraigned, waived reading of the complaint, and pleaded not guilty. (Rec., p. 118.)

The clerk of the Court of First Instance also sent to the clerk of the Supreme Court, Philippine Islands, the following communication:

> I have the honor to inclose herewith a certified copy of all entries in my docket referring to the case of *The United States* v. *Louis A. Dowdell and Wilson W. Harn*, and particularly of the entries relating to the arraignment of the said defendants. As to whether I was present at the separate trial of each of the said defendants, Dowdell and Harn, I can not say, because at the time of the trial of the said cause the clerk of the court was Mr. Lazaro Cinco, and not I.
>
> As the honorable Judge Norris has been transferred to another district, I am unable to supply the information required from him.

He inclosed copies of all entries which had been made upon the clerk's docket, the transcript of these entries, as they appear in the record, being introduced by the statement, "The certificate referred to in the foregoing letter is as follows" (Rec., p. 111), and closing, "True copy, to which I certify, Alfonso M. Cinco, clerk of the Court of First Instance of Samar" (p. 118).

The Supreme Court of the Philippine Islands, of course, take judicial knowledge of the identity of the clerk of the Court of First Instance; and this document was a duly certified copy of the records mentioned therein of that court.

It appears therefrom that the case was called for trial on May 3, 1907, when the complaint was read to all of the defendants and a demurrer thereto was filed. On May 4, after argument, the demurrer was overruled; and on the 5th the defendants—

> were asked whether they pleaded guilty or not guilty of the crime with which they were charged in the complaint read to them on the 3d instant, and they answered that they pleaded not guilty. The case then proceeded to trial with reference to the defendant MacIlvaine. (Rec., 112, 113.)

These entries further show that a daily record of the trial was kept, in which even the names of the witnesses examined and the exhibits introduced were mentioned; and that on each day of the trial or trials, which ended on May 10, defendants Dowdell and Harn were both present in person. (Rec., pp. 112–114.)

From the entry of May 10 it would appear that the judgments of the court were rendered on the same day immediately after the conclusion of the argument. (Rec., p. 114.) This in all probability is what actually occurred, but the formal opinion and judgment were not filed till the following day, and consequently bear date as of May 11. (Rec., pp. 115–117.)

It is also recited on page 102 of the record, in a copy of an entry on the minute book, that "thereafter, on the 11th day of May, 1907, the trial court rendered the following separate judgments in the said cause;" but there is no recital in the record of the judgments entered against Dowdell and Harn that they were present when the judgments were pronounced, the entries being, in fact, in the form of an opinion of the court concluding with the sentence; but in the entry on the clerk's docket of the judgment against McIlvaine, which follows the judgments against Dowdell and Harn, it is recited: "This case was called for judgment as to the defendant McIlvaine. *The parties being present*, the court, after considering the evidence of record, rendered the following judgment."

The judgments against them all were rendered on the same day, and manifestly at the same time, it being treated throughout as one case, but the evidence being introduced separately as to each defendant; and it is shown, therefore, by the record evidence, and independent of the certificate of the trial judge, that each of appellants was present when judgment was rendered in the Court of First Instance against him.

The Supreme Court of the Philippine Islands affirmed the judgments of the court below, except it found that there were no extenuating circumstances, and increased the sentence of each to imprisonment for eight years and one day. (Rec., pp. 119, 120.)

The errors assigned in this court are based on the following grounds:

First. The action of the Supreme Court in reopening the case after it had been argued and submitted for final decision, and taking new and additional testimony on its own motion.

Second. The action of the court in taking and considering the testimony or statement of the judge of the court of first instance, the same being taken without the knowledge or consent of appellants, not being sworn to, and appellants not having the opportunity to confront the witness, in violation of the sixth amendment to the Constitution of the United States, and section 5 of the Philippine bill of rights.

Third. The action of the court in admitting and considering the testimony or statement of the clerk of the court of first instance, because taken in the absence of appellants, and without an opportunity for them to meet and cross-examine the witness, and because the statement is not a certified copy of the minutes of the court of first instance and is neither sworn to nor has the seal of the court attached thereto.

Fourth. The appellants were tried in the Court of First Instance during their absence.

Fifth. They were tried without being arraigned or given an opportunity to plead.

Sixth. They were tried without an issue being joined.

Seventh. They were tried upon an information upon which no preliminary examination had been

held by any magistrate, judge, promotor fiscal, or his deputy.

Eighth. The information was not supported by an oath or affidavit, and sections 3 to 8 of General Order No. 58, which undertakes to permit a trial upon such an information, is contrary to the Philippine bill of rights.

Ninth. They were tried upon an information signed and presented by the promotor fiscal instead of upon a presentment or indictment found by a grand jury.

Tenth. The question of their guilt or innocence was not submitted to trial by a jury.

Eleventh. The judgments deprive them of their liberty without due process of law.

(Record, pp. 123, 125.)

BRIEF AND ARGUMENT.

I.

The case should not be reversed on the ground that appellants were tried and judgments were pronounced in the Court of First Instance in their absence, or without their being arraigned or issue joined.

The first six assignments of error relate to this subject and may be considered together.

No reversal should be had on the grounds mentioned for the following reasons:

1. *Appellants were, in fact, arraigned and pleaded not guilty before the trial was begun, and were present throughout the trial and when judgments were pronounced.*

While these facts did not appear in the record as first presented to the Supreme Court of the Philippine Islands, yet as above shown, they conclusively appear from the certified copies of entries on the clerk's docket, which were transmitted to the Supreme Court at its request; and these entries are corroborated, though their corroboration is unnecessary, by the certificates of the presiding judge and of the official court reporter.

2. *This evidence of appellants' arraignment and presence during the trial was competent, and the Supreme Court of the Philippine Islands did not err in considering the same.*

There is certainly no reason why the certified copies of entries on the clerk's docket should not have been looked to by the court. They were daily minutes of the proceedings, kept by the officer of the court whose sworn duty it was to keep such records, and they should have been copied into the transcript as a part of the record before it was transmitted to the Supreme Court. Though the entries on this docket may not have been signed by the court, which, however, does not appear from the record, yet they are entitled to the same credit as the entries on a clerk's rule docket, which are always made a part of the record and considered by the appellate court.

3. ***It was for the Supreme Court of the Philippine Islands to determine whether it would consider the certificates of the clerk, the presiding judge, and court reporter, and this court will not undertake to control that court in a matter of practice of this character.***

By section 9, act of July 1, 1902, chapter 1369 (32 Stat., 695), it is provided that "the Supreme Court and the Courts of First Instance of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided, and such additional jurisdiction as shall hereafter be prescribed by the government of said islands *subject to the power of said government to change the practice and method of procedure.*"

Therefore, the practice and method of procedure of the Philippine courts are questions to be determined by those courts themselves, with the condition that the Philippine Commission may, in whatever respect it shall deem proper, alter such rules of practice and procedure by legislative enactment. No question of procedure or practice in the Philippine courts can therefore be considered by this court, unless it be in violation of some act of Congress.

It is insisted, however, that the certificates of the clerk of the Court of First Instance and of the presiding judge, and of the court reporter, were in the nature of evidence, and for the court to consider them without an opportunity on the part of appellants to be present and cross-examine these persons, was in violation of the second clause in section 5 of the act above mentioned, which provides, among other things, "That in all criminal prosecutions, the accused shall enjoy the right * * * to meet the witnesses face to face." But this provision, like a similar one in the sixth amendment to the Constitution of the United States, has reference solely to the trial of the

cause upon its merits, and not to a collateral matter which involves some apparent defect in the record of the proceedings in the court below. It is not an uncommon thing, especially in our State Supreme Courts, for an accused to ask for a writ of mandamus to compel a trial judge to sign a bill of exceptions which contains certain matters that he thinks should appear therein. In such a case, the return of the judge to the writ is ordinarily taken as conclusive evidence of what occurred on the trial, although no opportunity is given the accused to cross-examine the judge in regard to his statements therein.

II.

The case should not be reversed on account of any defect in the information upon which appellants were tried.

The three grounds of criticism of the complaint mentioned in the seventh, eighth, and ninth assignments of error are: (1) That no preliminary examination was held by any magistrate, judge, promotor fiscal, or his deputy; (2) the information was not verified by oath or affidavit; and (3) the information was not found by a grand jury; and it is insisted that these omissions are in violation of section 5 of the Philippine bill of rights and the fifth and sixth amendments to the Constitution of the United States.

It is needless to consider the constitutional amendments, as the Constitution does not extend to the Philippine Islands.

The grounds of objection will be considered in the order mentioned.

(1) The insistence that there should have been a preliminary examination is founded upon section 12 of General Order No. 58 (Public Laws, Philippine Commission, vol. 1, p. 1053), which reads as follows:

> Every person making complaint charging the commission of a crime or public offense must inform the magistrate of all persons whom he believes to have any knowledge of its commission; and the magistrate shall issue subpœnas for such persons, requiring them to attend at a specified time and place as witnesses.

This objection is not maintainable for the follow-in reasons:

(a) *This section does not apply to a court of first instance, but only to municipal magistrates or courts of justices of the peace established by Chapter V, act No. 136 (Pub. Laws, Philippine Com., vol. 1, p. 264), which correspond to justices of the peace in the States.*

This is clearly shown by sections 13 and 14, which provide for an examination of the witnesses, and if the magistrate be satisfied that the crime complained of has been committed, and that there is reasonable ground to believe that the party charged committed it, he must issue an order for his arrest; but if he believe that such crime was not committed, or that if committed the person charged did not commit it, he must set such person at liberty.

Clearly this does not refer to any proceeding that may be had in a court of record, but only to a preliminary examination to ascertain whether or not the accused shall be held for trial in a court of record.

(b) *There is nothing in the record to show that such examination was not had; and, moreover, no objection to the complaint for the want of a preliminary examination was made in the Court of First Instance.*

A list of witnesses appears in connection with both the original complaint and the complaint as amended (Rec., p. 2, 5), and it is to be presumed that the court performed its duty in accordance with the statute. The examination prescribed being a mere preliminary matter, it was unnecessary that any record be made of it. Moreover, it appears that the parties defendant were in custody when the complaint was filed, and the proper orders were entered with reference to their giving bond (Rec., p. 3, 5); and there is no evidence in the record that sections 12, 13, and 14 of General Order No. 58 were not strictly complied with by the court.

However, if such examination were required, and not had, it was necessary for plaintiffs in error to raise the question before trial by some pleading in the nature of our plea in abatement, precisely the same as where in an indictment by a grand jury there are irregularities in the finding which do not appear of record. This was not done, and no question with reference to the validity of the complaint was ever raised in the Court of First Instance.

Plaintiffs in error did, however, file a demurrer to the complaint, but the ground here relied on was not mentioned in said demurrer (Rec., p. 6), and the question was raised for the first time in the assignments of error in the Supreme Court of the Philippine Islands. (Rec., p. 107.)

(c) *This question involves the construction of a rule of procedure adopted by the proper authorities in the Philippine Islands, and the ruling with reference thereto by the Supreme Court of the Philippine Islands is conclusive, and its judgment will not be reviewed by this court.*

(2) It was not necessary for the information or complaint to be verified by oath or ~~affidavit~~ affirmation.

Section 6 of General Order No. 58 prescribes what the contents of a complaint or information shall be, and in section 8 a general form for a complaint is given; and no requirement of an oath or ~~affidavit~~ affirmation there appears.

It is insisted, however, that such affidavit is required by that clause of section 5 of the act of Congress of July 1, 1902 (ch. 1369, 32 Stat., 691, 693), which reads:

> No warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

This clause, however, applies solely to the issuance of search warrants. It is in the precise language of the latter portion of the fourth amendment to the

Constitution of the United States, which relates to search warrants alone. But it is peculiar that the first part of this amendment, which declares that the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, appears in substance in a separate clause of said section 5; yet their separation can not alter the plain object of this provision.

Furthermore, no objection was taken in the Court of First Instance to the complaint on account of its not being sworn to, and the objection, when first taken in the Supreme Court of the Philippine Islands, or in this court, comes too late.

(3) It was not necessary that the information be found by a grand jury.

There is nothing in the act providing for the administration of the affairs of civil government in the Philippine Islands which requires by express language or by implication that an indictment or information must be found by a grand jury. It is, however, provided therein that "no law shall be enacted in said islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws." But due process of law does not require that one be tried on a presentment or indictment found by a grand jury.

Hurtado v. *California*, 110 U. S., 516.
Bolln v. *Nebraska*, 176 U. S., 83, 86.

In fact, there may be a due process of law without any resort to a court of justice.

> *Davidson* v. *New Orleans*, 96 U. S., 97.
> *Public Clearing House* v. *Coyne*, 194 U. S., 486, 508.

The information here used is, in form and character, precisely the same as those which have heretofore been before this court in cases coming from the Supreme Court of the Philippine Islands, and have been uniformly treated as sufficient. About one of like character, in *Paraiso* v. *United States* (207 U. S., 368, 372), this court said:

> The bill of rights for the Philippines, giving the accused the right to demand the nature and cause of the accusation against him, does not fasten forever upon those islands the inability of the seventeenth century common law to understand or accept a pleading that did not exclude every misinterpretation capable of occurring to intelligence fired with a desire to pervert.

III.

Appellants were not entitled to a trial by jury.

There is no provision in the Philippine bill of rights requiring or giving the accused a right to a trial by jury. Neither the due process clause nor the clause providing for the equal protection of the laws give such.

In *Missouri* v. *Lewis* (101 U. S., 22, 31) this court said:

> The fourteenth amendment does not profess to secure to all persons in the United States the benefit of the same laws and the same remedies. Great diversities in these respects may exist in two States separated only by an imaginary line. On one side of this line there may be a right of trial by jury and on the other side no such right.

In *Walker* v. *Sauvinet* (92 U. S., 90) it was held that a trial by jury in suits at common law pending in the State courts is not a privilege or immunity of national citizenship which the States are forbidden by the fourteenth amendment of the Constitution to abridge.

And in *Hallinger* v. *Davis* (146 U. S., 314) it was held that an act of the State of New Jersey which permitted one accused of a felony to waive trial by jury was not in conflict with the Constitution of the United States.

The fact that in the fifth amendment of the Constitution it is expressly provided that "no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury," with certain exceptions, and that in the seventh amendment the right of trial by jury is expressly preserved, shows conclusively that neither of these rights is embraced in the due process clause, for if they are, why were they mentioned in the Constitution at all? And, if they are not included in that clause as it appears in the Constitution, they of course can not be read into the like expression in the

Philippine bill of rights. The very fact that those rights are carefully omitted from that act, when so many other constitutional guaranties are specifically set forth therein, shows that Congress did not intend that they should apply to the Philippine Islands.

The judgment of the Supreme Court of the Philippine Islands should, therefore, be affirmed.

J. A. FOWLER,
Assistant Attorney General.

MARCH, 1911.

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DOWDELL *v.* UNITED STATES.

ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 131. Argued April 20, 1911.—Decided May 15, 1911.

Under § 5 of the act of July 1, 1902, c. 1369, 32 Stat. 691, unless action taken by the Supreme Court of the Philippine Islands to supply omissions in the record violates the Constitution or a statute of the United States, this court cannot disturb the judgment.

There is no valid objection based on the Constitution of the United States to the practice of the Supreme Court of the Philippine Islands adopted in this case for determining in what form it will accept the record of the court below.

The provision in § 5 of the Philippine act of July 1, 1902, c. 1369, 32 Stat. 691, that in all criminal prosecutions the accused shall meet the witnesses face to face is substantially the provision of the Sixth Amendment; is intended thereby that the charge shall be proved only by such witnesses as meet the accused at the trial face to face and give him an opportunity for cross-examination. It prevents conviction by *ex parte* affidavits.

The "face to face" provision of the Philippine Bill of Rights does not prevent the judge and clerk of the trial court from certifying as additional record to the appellate court what transpired on the trial of one convicted of a crime without the accused being present when the order was made.

Although due process of law requires the accused to be present at every stage of the trial, it does not require accused to be present in an appellate court where he is represented by counsel and where the only function of the court is to determine whether there was prejudicial error below.

Objections as to form and verification of pleading must be taken by accused before pleading general issue.

The Bill of Rights of the Philippine Islands does not require convictions to be based on indictment; nor does due process of law require presentment of an indictment. *Hurtado* v. *California*, 110 U. S. 516.

In the absence of legislation by Congress, there is no right in the Philippine Islands to require trial by jury in criminal cases. *Dorr* v. *United States*, 195 U. S. 138.

11 Philippine Islands, 4, affirmed.

THE facts are stated in the opinion.

Mr. Charles F. Consaul, with whom *Mr. Charles C. Heltman* and *Mr. Frank B. Ingersoll* were on the brief, for plaintiffs in error.

Mr. Assistant Attorney General Fowler for the United States.

MR. JUSTICE DAY delivered the opinion of the court.

This is a writ of error to the Supreme Court of the Philippine Islands to review a proceeding in which the plaintiffs in error, Louis A. Dowdell and Wilson W. Harn, together with one Charles H. MacIlvaine, were convicted in the Court of First Instance of the Philippine Islands upon an amended complaint which charged that the three persons named, as Inspectors and Lieutenants of the Philippine Constabulary, in the Province of Samar, Philippine Islands, conspired together to abstract, steal and convert to their own use certain public funds in the custody and control of Dowdell as supply officer, and guarded by Harn as officer of the day; that in pursuance of the conspiracy the three defendants, with the intent and purpose of stealing, and converting the same to their own use, unlawfully, feloniously and willfully removed the same from the office of the Philippine Constabulary to the residence of the said Harn in Catbalogan in said Province, and did there conceal the same, and during the night, in pursuance of said conspiracy, and for the purpose of concealing the evidence of their crime and of deceiving their superior officers concerning the disappearance of said public funds, did take and remove the safe, in which said funds had been kept in the office of the Philippine Constabulary, and caused the same to be taken and conveyed out into the bay adjacent, and there sunk in the waters of

the bay. The public funds abstracted and taken consisted of Philippine coin and paper currency of the value of nine thousand, nine hundred and seventy-one pesos and twenty-six centavos, equivalent in value to forty-nine thousand, eight hundred and fifty-six pesetas, in violation of paragraph three of article three hundred and ninety of the Philippine Penal Code.

The accused were convicted, and the present plaintiffs in error sentenced to imprisonment for six years and a day. Plaintiffs in error thereupon took an appeal to the Supreme Court of the Philippine Islands. In that court they were sentenced to eight years and one day imprisonment.

The case is brought here under § 5 of the act of July 1, 1902, 32 Stat. 691, c. 1369, giving this court the right to review, revise, reverse, modify or affirm final judgments or decrees of the Supreme Court of the Philippine Islands in which the Constitution or any statute, treaty, title, right or privilege of the United States is involved.

In the Supreme Court of the Philippine Islands the Attorney General asked that the case be sent back to the Court of First Instance for a new trial, because it did not appear that defendants had pleaded to the complaint, but the court overruled this application, and thereupon the court made the following order:

"*Resolved*, That the clerk of the Court of First Instance of Samar be, and he is hereby, directed to send forthwith to this court a certified copy of all entries in any book in his office referring to the case of *The United States* v. *Louis A. Dowdell and Wilson W. Harn*, and particularly of any entry relating to the arraignment of the defendants and to their plea. He is further directed to at once send to this court a certificate as to whether he was present at the separate trial of each of the defendants, Dowdell and Harn, and, if so, whether each or both of them were present at such trial, and the Hon. W. F. Norris, the judge who

tried the case, is hereby directed to send to this court a certificate showing whether the defendants and each of them were present during the trial of said cause against Louis A. Dowdell and Wilson W. Harn."

To this order Judge Norris, judge of the Court of First Instance, made return, in which he stated that each of the defendants, now plaintiffs in error, was present in open court during the entire time of trial from the calling of the case until after sentence was pronounced. The judge said he was unable to say whether there had been a formal arraignment or not. The clerk of the Court of First Instance certified a record of the proceedings in court, in which it appears that the defendants were asked whether they pleaded guilty or not guilty of the crime of which they were charged, and answered that they pleaded not guilty.

The official reporter of the court certified that his notes of the proceedings showed that the plaintiffs in error were arraigned, waived reading of the complaint and pleaded not guilty. The certificate of the reporter was signed by him as court reporter of the Twelfth Judicial District, and the judge of that district certified that the reporter was the duly appointed, qualified and acting reporter of the district. The reporter's certificate adds nothing to that which the clerk certified.

The first six assignments of error cover objections to this action of the court in amending its record, and to the want of presence of the accused, and the failure to show by the record the arraignment of the accused, their plea to the complaint and their presence during the trial.

If the Supreme Court of the Philippine Islands in taking the action referred to for supplying the record of omissions did not violate the Constitution, or any statute of the United States, then we cannot disturb the judgment below on these assignments of error. It is contended that the court erred in taking the statement of the judge of the

Court of First Instance without the knowledge or consent of the plaintiffs in error, that the statement was not sworn to; that the appellants were not given the opportunity to meet the witnesses face to face, or to be confronted with the witnesses, and, therefore, such statement was received in violation of Article Six of the Amendments to the Constitution of the United States, and § 5 of the act of Congress of July 1, 1902, 32 Stat. 691.

A like objection is made to the statement certified by the Clerk of the Court of First Instance, and because his statement is not a certified copy of the minutes, or any part thereof of the court, was not sworn to, and had no seal of the court attached.

As to the objection of the lack of oath to the certificates of the judge and clerk, and absence of a seal on the clerk's certificate of the proceedings—questions of that kind, where the court is correcting a record before it as an appellate tribunal, are addressed to the court making the order which may determine for itself in what form it will accept such record. At least there is no valid objection to such practice based on the Constitution or statutes of the United States.

It is averred that the order of the Supreme Court of the Philippine Islands was made without the knowledge or consent of the accused, and that the appellants had not the opportunity to meet the witnesses face to face, in violation of Article Six of the Amendments of the Constitution of the United States, and § 5 of the act of Congress of July 1, 1902, c. 1369, 32 Stat. 691, embodying the so-called Philippine Bill of Rights, which is substantially taken from the Bill of Rights of the Federal Constitution. *Kepner* v. *United States*, 195 U. S. 100. Section 5 of that act provides: "That in all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel, . . . to have a speedy and public trial, to meet the witnesses face to face, etc." This is substan-

tially the provision of the Sixth Amendment to the Constitution of the United States which provides that the accused shall enjoy the right to a speedy and public trial, and to be confronted with the witnesses against him. This provision of the statute intends to secure the accused in the right to be tried, so far as facts provable by witnesses are concerned, by only such witnesses as meet him face to face at the trial, who give their testimony in his presence, and give to the accused an opportunity of cross-examination. It was intended to prevent the conviction of the accused upon depositions or *ex parte* affidavits, and particularly to preserve the right of the accused to test the recollection of the witness in the exercise of the right of cross-examination. *Mattox* v. *United States*, 156 U. S. 237, 242; *Kirby* v. *United States*, 174 U. S. 47, 55; Wigmore on Evidence, Vol. 2, §§ 1396, 1397.

But this general rule of law embodied in the Constitution, and carried by statute to the Philippines, and intended to secure the right of the accused to meet the witnesses face to face, and to thus sift the testimony produced against him, has always had certain well recognized exceptions. As examples are cases where the notes of testimony of deceased witnesses, of which the accused has had the right of cross-examination in a former trial, have been admitted. Dying declarations, although not made in the presence of the accused, are uniformly recognized as competent testimony. *Mattox* v. *United States*, 156 U. S. *supra*. Documentary evidence to establish collateral facts, admissible under the common law, may be admitted in evidence. Cooley, Constitutional Limitations, 2d ed., 450 note; *People* v. *Jones*, 24 Michigan, 224.

In the present case, the judge, clerk of the court, and the official reporter were not witnesses against the accused within the meaning of this provision of the statute. They were not asked to testify to facts concerning their guilt or innocence,—they were simply required to certify, in

accordance with a practice approved by the Supreme Court of the Philippine Islands, as to certain facts regarding the course of trial in the Court of First Instance. The taking of such certification involved no inquiry into the guilt or innocence of the accused, it was only a method which the court saw fit to adopt to make more complete the record of the proceedings in the court below, which it was called upon to review. Where a court, upon suggestion of the diminution of the record, orders a clerk of the court below to send up a more ample record, or to supply deficiencies in the record filed, there is no production of testimony against the accused, within the meaning of this provision as to meeting witnesses face to face, in permitting the clerk to certify the additional matter. We think the court acted within its authority in this respect, and did not violate the Philippine Bill of Rights, embodied in the act of July, 1902, in the respects suggested.

If the assignments of error can be taken to cover the objection that the accused were not present when the court ordered the additional record to be made we think there is no merit in this objection. In *Hopt* v. *Utah*, 110 U. S. 574, this court held that due process of law required the accused to be present at every stage of the trial. And see *Howard* v. *Kentucky*, 200 U. S. 164. In *Schwab* v. *Berggren*, 143 U. S. 442, this court held that due process of law did not require the accused to be present in an appellate court, where he was represented by counsel and where the only function of the court is to determine whether there is error in the record to the prejudice of the accused.

As we understand the procedure in the Supreme Court of the Philippine Islands, it acts upon the record sent to it upon the appeal and does not take additional testimony, although it has power to modify the sentence. In any event, the record before us does not show that any

additional testimony was taken against the accused in the Supreme Court of the Philippine Islands bearing upon their guilt or innocence of the crime charged. The assignment of error is, in this respect, that the court made the order for the corrections of its record when the accused was absent from the court, and upon its own motion. For the reasons we have stated we think this was within the power of the court, and there was no lack of due process of law in making the order as the court did in this case.

Objections are made as to the want of proper arrest and preliminary examination of the accused before a magistrate, and that the information was not verified by oath or affidavit. If tenable at all, no objections of this character appear to have been made in due season in the Court of First Instance. Objections of this sort must be taken before pleading the general issue by some proper motion or plea in order to be available to the accused. 1 Bish. Crim. Pro., § 730.

As to the objection that no indictment was found by a grand jury as required by Article Five of the Amendments of the Constitution, there is no such requirement in the Philippine act of July 1, 1902, § 5, c. 1369. It is therein provided that "no law shall be enacted which shall deprive any person of life, liberty or property without due process of law." This court has held that due process of law does not require presentment of an indictment found by a grand jury. *Hurtado* v. *California*, 110 U. S. 516.

The objection that the accused was not tried by a petit jury is disposed of in *Dorr* v. *United States*, 195 U. S. 138, in which it was held that in the absence of congressional legislation to that end there was no right to demand trial by jury in criminal cases in the Philippine Islands. It is unnecessary to repeat the reasons for that conclusion announced in the *Dorr Case*.

Other assignments of error are made, an examination of which satisfies us that no violation of the Constitution or statutes of the United States in the proceedings had in the Supreme Court of the Philippine Islands warrants a disturbance of the judgment of that court.

Affirmed.

Dissenting, MR. JUSTICE HARLAN.